Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1214** (CTA Case No. 8286)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
SOUTH ENTERTAINMENT GALLERY, INC., Respondent.	**Promulgated:** OCT 28 2015 3:30 p.m.

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DECISION

CASANOVA, *J.*:

Ei incumbit probatio qui dicit, non qui negat.[1]

This is an appeal, by way of a Petition for Review[2], filed by petitioner Commissioner of Internal Revenue assailing the Amended Decision[3] dated July 7, 2014 and Resolution[4] dated August 29, 2014 of the Court of Tax Appeal's (CTA) Third Division in CTA Case No. 8286, which cancelled and set aside petitioner's Formal Letter of Demand with attached Details of Discrepancies and Assessment Notices dated

[1] "He who asserts, not he who denies, must prove."
[2] CTA *En Banc* Rollo, pp. 74-98
[3] Division Docket (Vol. III), pp. 913-924
[4] *Ibid.*, pp. 968-969

December 9, 2009; Final Notice Before Seizure dated May 28, 2010; and Warrant of Distraint and/or Levy dated September 1, 2010, against respondent South Entertainment Gallery, Inc. for its alleged deficiency income tax and value-added tax in the aggregate amount of ₱39,788,105.55 for taxable year 2007.

The facts of the case, as found by the CTA Third Division, are as follows:[5]

> "Petitioner, South Entertainment Gallery, Inc., *[respondent herein]* is a corporation organized and existing under the laws of the Philippines, with office address at 3/F SM City Pampanga, Barangay San Jose, San Fernando City, Pampanga, and Barangay Lagundi, Mexico City, Pampanga. It is engaged in the business of operating and conducting Bingo games and other games of chance, among others.
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue *[petitioner herein],* who holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.
>
> On June 8, 2009, petitioner received a Notice of Informal Conference dated May 8, 2009, issued by OIC-Revenue District Officer, Amador P. Ducut, of Revenue District Office No. 21, of the City of San Fernando, Pampanga, informing the former of the proposed assessments for deficiency Income Tax and Value-added Tax for taxable year 2007. Attached therewith is the Report signed by Revenue Officer II, Zenia O. Miclat.
>
> Consequently, on June 9, 2009, petitioner issued a Letter-Reply, addressed to OIC-Revenue District Officer Ducut, invoking its tax-exempt status as a grantee of Philippines Amusement and Gaming Corporation ("PAGCOR").
>
> On August 20, 2009, a Letter signed by Revenue Officer II Miclat, was issued to petitioner, answering the Letter-Reply dated June 9, 2009, and informing the latter of

[5] pages 829-837 of the original Decision dated April 15, 2014, Division Docket (Vol. III), pp. 829-851

the instruction for the issuance of an Informal Notice of Assessment.

Thus, on October 8, 2009, petitioner issued a Letter, addressed to OIC-Revenue District Officer Ducut, enclosing correspondence from PAGCOR and BIR.

On October 16, 2009, petitioner received a Preliminary Assessment Notice dated September 16, 2009, issued by Regional Director Romulo L. Aguila, Jr., for deficiency Income Tax and Value-added Tax, in the respective amounts of ₱8,068,653.80 and ₱30,529,560.40, inclusive of surcharge, interests and penalties, for taxable year 2007.

Accordingly, on October 19, 2009, petitioner issued a Letter, addressed to Regional Director Aguila, Jr., enclosing again copies of correspondence from PAGCOR and BIR.

On October 27, 2009, Regional Director Aguila, Jr., issued a Letter, addressed to petitioner, informing the latter of the denial of its Letters dated October 8, 2009 and October 19, 2009.

On December 4, 2009, PAGCOR, thru counsel, issued a Letter, addressed to Regional Director Aguila, Jr., seeking for the reconsideration and setting aside of the assessments against petitioner.

And on December 9, 2009, Regional Director Aguila, Jr., issued the assailed Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices.

On May 28, 2010, OIC-Revenue District Officer Ducut issued a Final Notice Before Seizure, addressed to petitioner, giving the latter ten (10) days from receipt thereof, within which to settle the deficiency assessments for Income Tax and Value-added Tax, in the aggregate amount of ₱39,788,105.55, inclusive of surcharge, interests and penalties, for taxable year 2007.

On September 1, 2010, OIC-Revenue District Officer Ducut issued the subject Warrant of Distraint and/or Levy, addressed to petitioner, enforcing the deficiency assessments in the aggregate amount of ₱39,788,105.55.

On September 24, 2010, petitioner issued a Letter, addressed to OIC-Revenue District Officer Ducut, requesting for the withdrawal and cancellation of the subject Warrant of Distraint and/or Levy dated September 1, 2010.

On April 13, 2011, petitioner received a Letter dated March 28, 2011, issued by OIC-Revenue District Officer Ducut, reiterating the collection of the deficiency assessments for Income Tax and Value-added Tax for taxable year 2007; with attached Memorandum dated February 3, 2011.

With that, on May 11, 2011, petitioner filed the present Petition for Review [With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction]; raffled to the then First Division of the Court.

On July 14, 2011, the Court issued a Resolution, suspending the implementation of the subject Warrant of Distraint and/or Levy dated September 1, 2010, subject to the posting of a security bond. On August 1, 2011, the Court, through a Resolution, approved the surety bond filed by petitioner.

On September 9, 2011, respondent filed her Answer, interposing the following Special and Affirmative Defenses:

> '4. Respondent hereby repleads the foregoing admissions and denials as part of her Special and Affirmative Defenses;
>
> 5. Contractual relationship between petitioner and the Philippine Amusement Gaming Corporation (PAGCOR) does not serve to exempt petitioner from tax liability:
>
>> 5.1 Philippine Amusement Gaming Corporation (PAGCOR) was one of the five government-owned or controlled corporations (GOCCs) exempted from payment of corporate income tax under

Section 27(C) of Republic Act No. 8424 otherwise known as 'An Act Amending the National Internal Revenue Code, as amended and for other purposes.' Under Section 1(C) of RA 9337 (effective November 1, 2005), PAGCOR was deleted from the list of exempted GOCCs;

5.2 Before RA 9337 became effective, various groups already [*sic*] lodged petitions for certiorari with the Supreme Court (SC), questioning the validity and constitutionality of RA 9337. On September 1, 2005, the SC dismissed all the petitions and declared RA 9337 as constitutional;

5.3 PAGCOR is no longer exempt from corporate income tax in view of its exclusion from the list of government-owned or controlled corporations (GOCCs) exempt from income tax under Section 27(C) of RA 8424. This is evident from the enactment of RA 9337. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application;

5.4 In the case of *Abakada Guro Party List vs. Honourable Secretary Ermita, et al.*, the SC succinctly stated: 'The Philippine Amusement and Gaming Corporation is not exempt from income tax anymore.' Both in law and jurisprudence the ultimate truth is announced of the relegation of petitioner into the status of an ordinary corporate taxpayer;

5.5 All legislative franchises, except only electric, gas and water utilities have been expressly subjected to the 10% VAT pursuant to Section 102 of the old NIRC as amended by RA 7716 (now Sec. 108 of the

> NIRC of 1997). Upon effectivity of Section 102 of the old NIRC as amended by RA 7716, PAGCOR ceased to be embraced by the franchise tax. Instead, it became subject to 10% VAT, in lieu of all other taxes, pursuant to Section 13 of PD No. 1869 as amended by Sections 3 and 12 of RA 7716. The 5% franchise tax had already been replaced by VAT. Section 108 of the NIRC of 1997 (then Section 106 of old NIRC as amended) provides that all franchise grantees which are not subject to the franchise tax under Section 119 NIRC of 1997 shall be considered as other franchise grantees subject to the 10% VAT;
>
> 5.6 In 15 March 2011, the Supreme Court affirmed the exclusion of PAGCOR from the list of GOCCs exempt from payment of tax under Section 27(C) of RA 8424 in the case of *PAGCOR vs. BIR*:

xxx xxx xxx

6. Petitioner is liable for deficiency Income Tax (IT) and Value-added Tax (VAT) in the respective amounts of ₱8,378,025.10 and ₱31,410,080.45 for taxable year 2007, broken down as follows:

xxx xxx xxx

> 6.1. Verification by respondent's revenue examiners disclosed that petitioner failed to pay income tax due per income tax return filed for taxable year 2007, hence, the above assessment in accordance with Section 27 of the NIRC of 1997;
>
> 6.2 Verification by respondent's revenue examiners disclosed that petitioner failed to file VAT returns required under Section 114 of the NIRC of 1997 in relation to Section 4-108-3(h) of Revenue Regulations No. 16-2005 implementing RA No. 9337;

xxx xxx xxx

7. Petitioner was afforded due process in the service of notices relative to the assessment of deficiency IT and VAT for taxable year 200[7]:

7.1 The assessment was carried out by virtue of Letter of Authority No. LOA 2007 00029838 dated 05 August 2008 granting revenue officers Zenia Miclat and Emmanuel F. Macalino the power to examine petitioner's books of accounts and other accounting records for all internal revenue taxes;

7.2 A Request for Presentation of Records and Checklist Requirements dated 18 August 2008 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.3 A Second Request for Presentation of Records dated 03 September 2008 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.4 A 3rd and Final Notice dated 02 October 2008 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.5 A Notice of Informal Conference dated 08 May 2009 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.6 A Preliminary Assessment Notice dated 16 September 2009 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.7 A Formal Letter of Demand dated 09 December 2009 with attached Details of Discrepancies and Assessment Notice was issued by respondent and received by petitioner on 08 January 2010 in relation to the investigation under LOA 2007 00029838. Receipt by petitioner of the Formal Letter of Demand is evinced by Registry Receipt No. 44 and as indicated in the list of documents for mailing on 08 January 2010 of the Assessment Division of Revenue Region No. 4, San Fernando City, Pampanga;

7.8 A Preliminary Collection Letter dated 20 April 2010 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.9 A Final Notice Before Seizure dated 28 May 2010 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.10 A Warrant of Distraint and/or Levy was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838.

8. The assessment has become final, executory and demandable in view of petitioner's failure to file a protest thereon:

8.1 The penultimate and ultimate paragraphs of Section 228 of the National Internal Revenue Code of 1997 read as follows:

xxx xxx xxx

8.2 Revenue Regulations No. 12-99 provides that the taxpayer may file an administrative protest against the formal letter of demand and assessment notice within thirty days from receipt thereof and if

> the taxpayer fails to file a valid protest within the allotted period from receipt, the assessment shall become final, executory and demandable;
>
> 8.3 Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (CTA Rules) reads as follows:
>
> xxx xxx xxx
>
> 8.4 In the case at bar, petitioner received a copy of the Formal Letter of Demand and Assessment Notices on 08 January 2010. However, petitioner did not file a protest on the Formal Letter of Demand and simply denied receipt thereof; and
>
> 8.5 Failure to observe the reglementary period provided under the law is fatal to the cause of petitioner. Without a valid protest filed on time, the assessment is considered under the law, rules and jurisprudence as final, executory and demandable.'

On October 24, 2011, the parties entered their Joint Stipulation of Facts and Issues; the same was approved by the Court in a Resolution dated October 27, 2011. On January 9, 2012, the Court issued the Pre-Trial Order.

Trial ensued. Both parties presented and offered their respective documentary and testimonial evidence.

On April 8, 2013, the case was transferred to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2013, dated March 26, 2013, entitled 'Reorganizing the Three (3) Divisions of the Court of Tax Appeals.'

On April 22, 2013, the case was submitted for decision, taking into consideration the Memorandum for Petitioner, *sans* respondent.

Hence, this Decision." *(Citations Omitted)*

In the Decision[6] dated April 15, 2014, the CTA Third Division sustained the Commissioner of Internal Revenue (CIR)'s deficiency income tax assessment, while cancelling the value-added tax (VAT) assessment. The *fallo* of the said Decision reads as follows:

> "**WHEREFORE**, the Petition for Review is hereby **PARTLY GRANTED.**
>
> Accordingly, the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices, dated December 9, 2009; the Final Notice Before Seizure dated May 28, 2010; and the Warrant of Distraint and/or Levy dated September 1, 2010, insofar as it covers the deficiency Value-added Tax for taxable year 2007 are hereby **CANCELLED** and **SET ASIDE.**
>
> On the other hand, petitioner is hereby **ORDERED** to **PAY** the amount of ₱7,734,282.50, representing deficiency Income Tax, inclusive of the twenty five percent (25%) surcharge imposed under Section 248(A)(3) of the 1997 NIRC, as amended; to compute:

	Basic	***Surcharge***	***Total***
Income Tax	₱6,187,426.00	₱1,546,856.50	₱7,734,282.50

> In addition, petitioner is hereby **ORDERED** to **PAY**, as follows:
>
> a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Income Tax in the amount of ₱6,187,400.92, computed from April 15, 2008, until full payment thereof pursuant to Section 249(B) of the 1997 of the NIRC, as amended; and
>
> b) Delinquency at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱7,734,282.50 and on the twenty percent (20%) deficiency interest which have accrued from the date afore-stated in (a) computed from January 15, 2009, until full payment thereof

[6] Division Docket (Vol. III), pp. 829-851

> pursuant to Section 249(C) of the 1996 NIRC, as amended.
>
> **SO ORDERED.**"

On May 7, 2014, respondent *[petitioner therein]* filed a Motion for Partial Reconsideration [of the Decision dated April 15, 2014][7], praying that the above Decision be partially reconsidered by ordering the withdrawal and cancellation of the Warrant of Distraint and/or Levy dated September 1, 2010 and, further, declaring petitioner not liable for deficiency income tax for taxable year 2007.

On the other hand, petitioner *[respondent therein]* filed, through registered mail, her Motion for Partial Reconsideration (Re: Decision dated 15 April 2014)[8] on May 9, 2014, praying that the Decision promulgated on 15 April 2014 be partially reconsidered by affirming the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices (FLD-DDAN), dated December 9, 2009; the Final Notice Before Seizure (FNBS) dated May 28, 2010; and the Warrant of Distraint and/or Levy (WDL) dated September 1, 2010, insofar as it covers the deficiency VAT for taxable year 2007 and to satisfy the same pursuant to Section 207 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On June 18, 2014, respondent *[petitioner therein]* filed a Comment/Opposition [To Respondent's Motion for Partial Reconsideration (Re: Decision dated 15 April 2014) dated May 7, 2014][9], praying that petitioner's Motion for Partial Reconsideration be denied for lack of merit.

Hence, on July 7, 2014, the CTA Third Division found merit in respondent's Motion for Partial Reconsideration [of the Decision dated April 15, 2014] and ruled that petitioner failed to prove that the FLD-DDAN dated December 9, 2009 were, in fact, really received by respondent. Thus, the Court *a quo* rendered an amended Decision[10] in this wise:

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[7] *Ibid.*, pp. 853-877
[8] *Id.*, pp. 881-889
[9] *Id.*, pp. 906-911
[10] *Supra* No. 3

> "**WHEREFORE**, the 'Motion for Partial Reconsideration [of the Decision dated April 15, 2014]' filed by petitioner is hereby **GRANTED**.
>
> Accordingly, the Decision dated April 15, 2014 is hereby **REVERSED** and **SET ASIDE**. The Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices, dated December 9, 2009; the Final Notice Before Seizure dated May 28, 2010; and the Warrant of Distraint and/or Levy dated September 1, 2010, are hereby **CANCELLED** and **SET ASIDE**.
>
> The 'Motion for Partial Reconsideration (Re: Decision dated 15 April 2014)' filed by respondent is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Aggrieved, petitioner filed, on July 24, 2014, through registered mail, a Motion for Reconsideration (RE: Amended Decision dated 07 July 2014)[11], praying that her Motion be given due course and the Amended Decision be recalled.

On August 29, 2014, the Court *a quo* promulgated the assailed Resolution[12], denying petitioner's Motion for Reconsideration for lack of merit.

Then, after asking for an extension of time, petitioner elevated the matter to the Court *En Banc* on October 2, 2014 *via* the instant Petition for Review. She prays that the Court *En Banc* give due course to the instant petition and that the Resolution dated August 29, 2014 and Amended Decision dated July 7, 2014 be reversed and set aside, and a new one be entered dismissing the original petition before the Court in Division for lack of jurisdiction; or in the alternative, the assessment of deficiency taxes on taxable year 2007 be upheld along with the imposition of surcharges and deficiency and delinquency interest.

In the Resolution[13] dated November 6, 2014, the Court *En Banc* directed respondent to file its Comment within ten (10) days from

[11] Division Docket (Vol. III), pp. 942-955
[12] *Supra* No. 4

receipt thereof. In compliance, respondent filed its Comment[14] on November 24, 2014.

On January 8, 2015, the Court *En Banc* issued a Resolution[15] which gave due course to the instant Petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

On February 26, 2015, respondent filed its Memorandum[16], while petitioner filed her Memorandum[17] on March 31, 2015. Thus, in the April 16, 2015 Resolution[18], the Court *En Banc* deemed the case submitted for decision.

In her Petition for Review, petitioner reiterated the previous issues[19] she raised in the Court in Division, which can be summed into:

> Whether or not the Court has jurisdiction over the present case; and
>
> Whether or not there was a valid service of the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices to respondent.

Petitioner asserts that the CTA Third Division erred in holding that she should prove the fact that respondent had actually received the FLD-DDAN. By requiring so, the Court would be imposing a duty which is not required of her by law to perform. She insists that the disputable presumption that *a letter duly directed and mailed, was received in the regular course of the mail*[20], is already deemed satisfied if uncontradicted by any other evidence. Furthermore, petitioner also questions this Court's jurisdiction by insisting that the original Petition for Review, filed with the Court in Division, was already filed out of time.

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[13] CTA *En Banc* Rollo, pp. 141-142
[14] Ibid., pp. 143-152
[15] *Id.*, pp. 154-155
[16] *Id.*, pp. 161-182
[17] Id., pp. 183-207
[18] *Id.*, pp. 209-210
[19] Petition for Review, CTA *En Banc* Rollo, pp. 77-79 *citing* the Pre-Trial Order dated January 9, 2010, Division Docket (Vol. I), pp. 323-329; Motion for Partial Reconsideration (Re: Decision dated 15 April 2014)dated May 9, 2014, *Supra* No. 7; and Motion for Reconsideration (RE: Amended Decision dated 07 July 2014) dated July 24, 2014, *Supra* No. 10
[20] Section 3(v), Rule 131 of the Rules of Court

She claims that by failing to properly observe the mandated procedure in Section 228 of the NIRC of 1997, as amended, the Court, in effect, has no jurisdiction to pass upon the validity of the contents of the FLD-DDAN since it was already final and executory.

On the other hand, in its Comment, respondent claims that the arguments raised by petitioner have already been fully considered and addressed by the Court in Division. Hence, the instant Petition for Review should be dismissed outright for failing to raise any new issues.

After due consideration of the arguments presented by the parties and thorough evaluation of the records of this case, the Court *En Banc* finds no merit in the instant Petition.

The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[21] Section 7(a)(1) of Republic Act (RA) No. 1125[22], as further amended by RA No. 9282, provides that:

> "**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 xxx xxx" (Emphasis Ours)*

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[23], the Supreme Court had the opportunity to discuss the jurisdiction of the Court of Tax Appeals in this wise:

[21] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010
[22] "An Act Creating the Court of Tax Appeals"
[23] G.R. No. 162852, December 16, 2004

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." *(Emphasis Ours)*

Based from the foregoing, the second part of Section 7(a)(1) of RA No. 1125, as amended, confers jurisdiction to this Court to determine whether a warrant of distraint and levy issued by the BIR is valid. Such issue falls within the ambit of **other matters** arising under the NIRC or other laws administered by the BIR. Nonetheless, petitioner insists that since the assailed assessment has already attained finality, in view of respondent's failure to timely dispute and appeal the same within thirty (30) days after receipt of such decision or ruling, the Court's assumption of jurisdiction over warrants of distraint or levy cannot be so far reaching that it can traverse from the validity of the collection procedures and then go all the way back to examine the validity of the assessment.

We do not agree.

Time and again, *We* have consistently held the importance of issuing a Final Assessment Notice (FAN), not only for the purpose of informing the taxpayer concerned of its deficiency taxes but, more importantly, to enable the filing of protest. It is the act of timely filing a protest that makes an assessment a disputed assessment, which in turn qualifies it to fall under the exclusive appellate jurisdiction of the CTA. Stated differently, there can be no final, executory and demandable assessment where there is no showing that the subject FAN was properly and duly served upon the taxpayer concerned.[24]

Parenthetically, when it comes to the issuance, sending and mailing of assessments and other tax notices, Section 228 of the NIRC of

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[24] *See* People of the Philippines vs. Joseph Typingco, CTA EB Crim No. 021 (CTA Crim Case No. O-114), September 27, 2013

1997, as amended, in relation to Section 2 of Revenue Regulations (RR) No. 18-2013[25], which amended certain sections of RR No. 12-99[26], provides the due process requirement that should be observed both by the CIR, or her duly authorized representative, and the taxpayer concerned. The said section provides:

> "**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**: *x x x*
>
> *xxx xxx xxx*
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.
>
> **If the taxpayer fails to respond, the Commissioner 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.
>
> *xxx xxx xxx" (Emphases Ours)*

In addition thereto:

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[25] "AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT", dated November 28, 2013

[26] "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", dated September 6, 1999

"**SECTION 2.** ***Amendment.*** — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:

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

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

xxx xxx xxx

3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — ***The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative.*** The FLD/FAN 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 assessment shall be void*** (see illustration in ANNEX "B" hereof).

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent ***may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.*** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

xxx xxx xxx" (Emphases and Italics Ours)

To recapitulate, the timely issuance of a FLD and FAN is a substantive prerequisite to tax collection. This Court cannot turn a blind eye on the importance of such notices. The use of the word *"shall"* in subsection 3.1.3 describes the mandatory nature of the service of FLD/FAN, and the absence of which renders nugatory any assessment made by the tax authorities. Furthermore, the said revenue regulations provide the modes of service that should be resorted to in issuing said deficiency assessments. One of which is service by mail, thus:

"**3.1.6 Modes of Service.** — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

xxx *xxx* *xxx*

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer." *(Emphasis and Italics Ours)*

Verily, the last paragraph of the above-quoted provision requires that the PAN/FLD/FAN/FDDA issued by the BIR should be duly served to the taxpayer or to his accredited tax agent. In fact, the Supreme Court, on numerous occasions, clarified that an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period.[27] In the case of *People of the Philippines vs. Ruperto P. Rodriguez*[28], this Court emphasized the importance of informing a taxpayer of the assessment made, since it is part of the due process requirement in the issuance of a deficiency tax assessment, hence:

> "In this regard, the records of this case negate compliance with the rudiments on procedural due process. The mere presentation of transmittal records by the prosecution is insufficient to establish that indeed, the preliminary assessment notice (PAN) and assessment notice, and letter of demand were sent to, and were duly received by Luzon's authorized representative, because transmittal records, by its very nature, do not clearly indicate or specify the nature of the document being mailed or sent out. Uncorroborated by other evidence to definitely identify, not only the nature of the mail matter sought to be proven as having been delivered, **but also, the authority of the person who supposedly received said mail matter, have little probative value to establish notice to Luzon to pay its subject corporate tax liabilities.**
>
> **It must be remembered that in case of a civil action to collect unpaid taxes, the law requires a convincing proof to show that indeed preliminary assessment notice (PAN), assessment notice, and letter of demand were actually sent to and received by the taxpayer.**" *(Emphases Ours)*

Going back to the instant case, petitioner asseverates that she duly served her tax assessment notices, *via* registered mail, to respondent. She even invoked the presumption that a letter duly directed and mailed was received in the regular course of the mail.[29] Unfortunately, however, such is merely a disputable presumption. It is a basic rule of evidence that each party must prove his affirmative allegation.[30]

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[27] Commissioner of Internal Revenue vs. Pascor Realty and Development Corp., et al., G.R. 128315, June 29, 1999
[28] CTA Crim. Case No. O-028, July 12, 2011
[29] Section 3 (v), Rule 131 of the Rules of Court
[30] Lolita Lopez vs. Bodega City (Video-Disco Kitchen of the Philippines), et al., G.R. No. 155731, September 3, 2007

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.[31]

Thus, to refute petitioner's allegations, respondent presented its Vice President for Finance, **Mr. Ruben Q. Ong**, as witness. In his Judicial Affidavit[32] dated January 26, 2012, he firmly denied receiving any FAN from petitioner. During his cross -examination, Mr. Ong testified that:

"*x x x*

ATTY. VELASCO:
Q. Mr. Ong from to the BIR which you attached to you affidavit, how many were sent through registered mail and received by your office? [*sic*]

MR. ONG:
A. Actually, as far as I know, **there are no registered mails that reached our office. Normally, express mail, ordinary mail or couriers.**

ATTY. VELASCO:
Q. So, these correspondences from the BIR were sent through express mail, and mail couriers, is that your answer?

MR. ONG:
A. **Normally, they are personally delivered to our office by the BIR representative or examiner. I don't know.**

ATTY. VELASCO:
Q. You are the vice president of South Entertainment Gallery, Inc.?

MR. ONG:
A. Yes, it is a subsidiary of AB Leisure, where I am the Vice President.

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31 Republic of the Philippines vs. Court of Appeals et al., G.R. No. L-38540, April 30, 1987
32 Exhibit "R"

ATTY. VELASCO:
Q. Do you have any personal involvement as to the receipt of mail matters for your office?

MR. ONG:
A. We have personal knowledge that we have people there authorized to receive. The Operation's Supervisor or the Branch Head.

x x x."[33] *(Emphases Ours)*

By directly denying receiving the assessment, petitioner is now burdened to present factual evidence necessary to establish her claim.[34] Our 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.[35]

Thus, to repudiate respondent's allegation of not receiving the FLD-DDAN dated December 9, 2009, and to prove that the said assessment notice was, indeed, timely served and properly received by respondent, petitioner offered the following exhibits in her Formal Offer of Documentary Evidence[36] in support of her claim, *to wit*:

Exhibit	Description	Purpose
"8" (Pages 492-493 of the BIR Records)	Formal Letter of Demand dated 09 December 2009.	x x x To prove that the Formal Letter of Demand with attached Details of Discrepancy and Audit Result/Assessment Notices No. 021-R-0804084618 dated December 9, 2009 issued against South Entertainment Gallery Inc. were delivered to the Post Office of San Fernando Pampanga; To prove that the Formal Letter of

[33] Transcript of Stenographic Notes (TSN) dated January 31, 2012, pp. 13-15
[34] Section 1, Rule 131 of the Rules of Court
[35] Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue, G. R. No. 157064, August 7, 2006
[36] Docket (Vol. II), pp. 689-700

		Demand and Final Assessment Notices No. 021-R-0804084618 dated December 09, 2009 issued against South Entertainment Gallery Inc. under Registered Receipt Number 44 subject of the instant case were received by petitioner; To prove that the Mail Matter under Registry Receipt Number 44 pertains to the Formal Letter of Demand with attached Details of Discrepancy and Audit Result/Assessment Notices No. 021-R-0804084618 dated December 09, 2009 issued against South Entertainment Gallery Inc; x x x
"8-a" (Page 490 of the BIR Records)	Details of Discrepancy	(same as above)
"8-b" (Page 487 of the BIR Records)	Audit Result/ Assessment Notice No. 021-R-0804084618 dated December 09, 2009 for Compromise Penalty	(same as above)
"8-c" (Page 486 of the BIR Records)	Audit Result/ Assessment Notice No. 021-R-0804084618 for VAT.	(same as above)
"8-d" (Page 484 of the BIR Records)	Audit Result/ Assessment Notice No. 021-R-0804084618 for Income Tax	(same as above)
"12"	Affidavit of Administrative Aide Ronnie SJ. Ocampo	(same as above)

"12-a"	Signature of Affiant Ronnie SJ Ocampo	x x x
"13"	Registry Receipt No. 44	(same as above)
"14"	Certification issued by the Philippine Postal Corporation dated August 22, 2012.	(same as above) To prove that the BIR Revenue Region No. 04 through Administrative Aide Ronnie SJ Ocampo delivered the Formal Letter of Demand and Final Assessment Notice via registered mail on January 08, 2010 to the Post Office of San Fernando, Pampanga; To prove that letter carrier Emelito Victoria delivered the said mail matter recorded as registered letter No. 44 to South Entertainment Gallery, Inc. at San Fernando Pampanga on January 13, 2010; x x x
"14-a"	Signature of Affiant Emelito Victoria.	x x x
"15"	List of Documents mailed, delivered and received.	(same as above) To prove that the Formal Letter of Demand and Final Assessment Notice under Registry Receipt No. 44 was served and duly received by South Entertainment Gallery, Inc. x x x
"15-A"	Highlighted mail matter delivered by the Philippine Postal Corporation and received by South Entertainment Gallery.	(same as above)
"15-B"	Signature of Ms. Rose Ann Gomez	To prove that letter carrier Emelito Victoria delivered the said mail matter recorded as registered letter No. 44 to South Entertainment

		Gallery, Inc. at San Fernando Pampanga on January 13, 2010 To prove that the Formal Letter of Demand and Final Assessment Notice under Registry Receipt No. 44 was served and duly received by South Entertainment Gallery, Inc. x x x

Evidently, it can be seen that on January 8, 2010, petitioner sent the subject FLD-DDAN dated December 9, 2009 *via* registered mail. Petitioner's witness, **Mr. Ronnie SJ. Ocampo**, Administrative Aide VI of BIR Revenue Region No. 4, testified that he placed the said assessment notice in a sealed envelope and delivered the said mail matter to the Post Office of San Fernando, Pampanga which was recorded as Registered Receipt Number 44. [37] Petitioner even secured a Certification[38] from the Philippine Postal Corporation dated August 22, 2012 to bolster her witness's testimony.

Ordinarily, the evidence presented by petitioner, coupled with the presumption of regularity, would have been sufficient to prove the fact of mailing and its receipt thereof. However, again, at the risk of being repetitive, by directly disputing the receipt thereof, petitioner is now tasked with the burden to prove respondent's **actual receipt** of the mailed assessment in accordance with the due process requirement.

In the case of *Estate of the late Juliana Diez vda. De Gabriel vs. Commissioner of Internal Revenue*[39], the Supreme Court had the opportunity to explain that improper service of an assessment notice is clearly not binding on the taxpayer concerned. Thus:

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer actually receive said notice

[37] A7, p. 2, Exhibit "12"
[38] Exhibit "14"
[39] G.R. No. 155541, January 27, 2004; citing Collector of Internal Revenue vs. Bautista, G.R. Nos. L-12250 & L-12259, May 27, 1959

> within the five-year period. It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. **Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received.**" *(Emphasis Ours)*

Likewise, in the case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et. al.*[40], the High Court ruled that:

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

More so, when asked to clarify about respondent's actual receipt of the mailed matter, Mr. Ocampo testified that:

"x x x

JUSTICE VICTORINO:
So, having been the person who usually brings the mail matter from the BIR to the Post Office, is it regular that the mail matters supposedly for the tenants of the SM be received by one of the Administrative Officer in SM?

MR. OCAMPO:
A. Your Honors, to be honest, **I am only in-charged of the mailing and the Post Office is in-charged of whoever shall receive or will be receiving the mail matters coming from our office.**

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[40] G.R. No. 128315, June 29, 1999

JUSTICE VICTORINO:
In your experience, is it regular that a person from the SM Mall be the one receiving for the tenants of SM?

MR. OCAMPO:
B. Your Honors, maybe **the best person to be answering this is the postman because I do not really have any idea.**

x x x."[41] *(Emphases Ours)*

In her attempt to prove respondent's receipt of the FLD-DDAN dated December 9, 2009, petitioner presented as her witness, **Mr. Emelito Victoria**, Postman II of the Post Office of San Fernando, Pampanga, the postman assigned to deliver mail matters to SM Pampanga. However, the testimony of Mr. Victoria only affirmed the fact that he did not attempt to directly deliver the FLD-DDAN to respondent, but rather to a certain Ms. Rose Ann Gomez. Thus:

"x x x

ATTY. LIM:
My last question.
Q. **So, you don't have any proof whether or not Ms. Rose Ann Gomez actually delivered it to South Entertainment Gallery?** So, your level is only up to SM Admin?

MR. VICTORIA:
A. **SM Admin *lang*.**

ATTY. LIM:
Q. And, you don't have any proof whether or not this is actually the procedure in SM?

MR. VICTORIA:
A. Opo kasi may sarili po silang logbook, hindi ko po alam kung pinare-receive nila doon, may logbook silang sarili, eh.

[41] TSN dated August 30, 2012, at pp. 28-29

EXECUTIVE CLERK:
T. Ma'am, I do not have any proof because they have their own logbook.

x x x

JUSTICE UY:
Mr. Witness, did you ever attempt to deliver a letter to the tenant directly?
Sinubukan niyo bang diretsong ipadala sa tenant?

MR. VICTORIA:
A. ***Hindi pa po.***

EXECUTIVE CLERK:
T. No, your Honors.

JUSTICE UY:
Never attempted.
So, from the very beginning, how did you start delivering the letter? The first time you delivered letters to the tenants?

MR. VICTORIA:
A. To the admin, your Honors.

JUSTICE UY:
To admin?

MR. VICTORIA:
A. *Opo.*

x x x."[42] *(Emphases Ours)*

Categorically, the subject FLD-DDAN was delivered to the administration office of SM Pampanga and not to respondent. The law is clear, petitioner or her duly authorized representative must inform the taxpayer of the assessment made against it. The due process requirement necessitates that service to a person appointed by the taxpayer, under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall then only it be deemed service to the taxpayer concerned.[43]

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[42] TSN dated November 20, 2012, at pp. 38-41
[43] *Supra* No. 24

It is worthy to note that considering the importance of the FLD-DDAN, the prudent course would have been to directly serve the said assessment notice to respondent. The fact that the administrative office of SM City Pampanga is located at the ground floor, and respondent's registered business address is at the third floor, as a tenant of the same mall, to which, needless to say, is open to the public, petitioner or any of her representatives could have personally served the assessment notices to respondent with ease.

We find the case of *Commissioner of Internal Revenue vs. Gallardo and Associates*[44] instructive. Thus:

> "However, evidence prove that **the FAN was not personally served on the taxpayer or any duly authorized representative. The FAN was attempted to be served on Ms. Sheryl Lim, an Accounting Admin Assistant of petitioner, and indisputably not an authorized representative of the taxpayer. This fact remained uncontroverted.** x x x Needless to state, the act of Revenue Officer Dagalangit in leaving the FAN with Ms. Lim, witnessed by two other revenue officers, is immaterial given the basis thereof.
>
> *xxx xxx xxx*
>
> Not having validly served the FAN on petitioner on the last day of the period to assess for December 2003, respondent's right to assess petitioner of deficient withholding taxes for the taxable period 2003 has already prescribed." *(Emphasis Ours)*

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.[45] Considering the extensive machineries that the government has within its disposal, due process dictates that taxpayers must be properly informed and duly served of any tax deficiency assessments against them. Needless to say, the power to tax must be used justly and not treacherously in order to maintain the general public's trust and confidence in the government.

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[44] CTA EB No. 1043, June 10, 2014 (CTA Case No. 7920)
[45] Section 1, Article III, 1987 Philippine Constitution

In summation, following the well-settled rule that a void assessment bears no fruit, petitioner's FLD-DDAN No. 021-R-0804084618 dated December 9, 2009 and Final Notice Before Seizure dated May 28, 2010 cannot validly be used as a basis for the issuance of a Warrant of Distraint and Levy.

Accordingly, finding no reversible error, the Court *En Banc* finds no cogent reason or justification to disturb the conclusions reached by the CTA Third Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Amended Decision dated July 7, 2014 and Resolution dated August 29, 2014 of the CTA Third Division in CTA Case No. 8286 are both **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice