REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DIRECT CONTAINER LINE PHILS., INC. (Now VANGUARD LOGISTICS SERVICES PHILS., INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1019
(CTA Case No. 7616)

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

Promulgated:
JAN 07 2015
3:45 p.m.

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RESOLUTION

CASTAÑEDA, JR. *J.*:

This resolves respondent's "Motion for Partial Reconsideration" (Re: Decision dated August 04, 2014) filed on September 2, 2014 with petitioner's "Opposition/Comment" (Motion for Partial Reconsideration) (Re: Decision dated August 04, 2014) filed on September 18, 2014.

In the assailed Decision,[1] the CTA *En Banc* cancelled the assessments for taxable year 2003 except assessment for deficiency withholding tax on compensation, the dispositive portion of which reads:

> **WHEREFORE**, on the basis of the foregoing considerations, the petition is **PARTIALLY GRANTED.** The September 10, 2009 Decision of CTA First Division and the May 8, 2013 Resolution of the CTA Special First Division in CTA No. 7616 are hereby **MODIFIED.**

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[1] *Rollo*, pp. 143-144.

The dispositive portion of the Decision promulgated on September 10, 2009 is modified as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2003 covering deficiency income tax, value-added tax, final withholding tax, fringe benefits tax, documentary stamp tax and compromise penalties are hereby **CANCELLED and WITHDRAWN.** However, the assessment for deficiency withholding tax on compensation is hereby **UPHELD.** Accordingly, petitioner is hereby **ORDERED to PAY** the aggregate amount of P 44,023.44 detailed as follows:
>
> | | Basic Tax | Surcharge | Total |
> |---|---|---|---|
> | Deficiency Withholding Tax on Compensation | 35,218.75 | 8,804.69 | 44,023.44 |
>
> In addition, petitioner should be held liable to pay:
>
> a. Deficiency interest at the rate of 20% per annum pursuant to Section 249 (B) of the NIRC of 1997 on the deficiency withholding tax on compensation from January 15, 2004;
>
> b. Delinquency interest at the rate of 20% per annum on the total amount due of P 44,023.44 representing deficiency withholding tax on compensation and on the deficiency interest which have accrued as aforestated in (a) computed from September 15, 2006 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997.
>
> **SO ORDERED.**

In her motion, respondent claimed that a Pre-Assessment Notice was actually issued, hence, assessment against petitioner for deficiency VAT, income tax, withholding tax on compensation, and fringe benefit tax for taxable year 2003 should be upheld.

Respondent further argued that petitioner acknowledged its deficiency tax liabilities for taxable year 2003 when it offered a compromise settlement in June 9, 2010. Je

On the other hand, petitioner noticed that respondent's arguments were merely repetition of previous contentions which have been thoroughly and fully resolved in the assailed decision. With regard to the offer to compromise, petitioner cited Sec. 27, Rule 130 of the Rules of Court which provides that offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.

We DENY respondent's motion for lack of merit.

There is no cogent reason to reverse the assailed CTA *En Banc* Decision dated August 4, 2014 considering that no new grounds have been raised and the arguments brought by respondent have been exhaustively discussed and passed upon in the Decision sought to be reconsidered. In any event, We shall reiterate the ruling of the Court *En Banc*.

The issuance of the Preassessment Notice or Preliminary Assessment Notice (PAN) is an indispensable element of due process under Section 228 of the National Internal Revenue Code of 1997 as implemented by Revenue Regulation (RR) No. 12-99. In fact, even RR No. 18-2013 amending Sec. 3 of RR 12-99 mandates that PAN must be issued before issuance of Final Assessment Notice (FAN).

Jurisprudence supports the strict compliance with the requirements of PAN. In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[2] (*Metro Star* case), the Supreme Court held that compliance with the notice requirements must be observed otherwise there will be a denial of due process. The absence of a PAN is fatal to the validity of an assessment. In the same case, the Court acknowledged that the sending of a PAN is a substantive, not merely a formal, requirement. The Court wrote:

> 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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> xxx xxx xxx

[2] G.R. No. 185371, December 8, 2010, 637 SCRA 633.

> From the provision quoted above, 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.[3] (Emphasis ours)

In most recent CTA cases, the court recognized PAN as an indispensable element of due process citing the above-mentioned jurisprudence. In *Fabtech Export Industries, Inc. v. Commissioner of Internal Revenue,*[4] the Formal Letter of Demand, Details of Discrepancies and Audit Results/Assessment Notices were cancelled and withdrawn due to lack of PAN. Similarly in the case of *Commissioner of Internal Revenue v. La Frutera, Inc.,*[5] assessment for taxable year 2004 was cancelled for failure of respondent to issue PAN prior to FAN. In *SVI Information Services Corporation v. Commissioner of Internal Revenue,*[6] the Preliminary Collection Letter was cancelled for failure of respondent to prove that PAN was delivered to petitioner and in *Manuel B. Palaganas doing business under the name and Style STEMIKO COMMERCIAL v. Commissioner of Internal Revenue,*[7] assessments were cancelled for failure to prove that PAN and FAN were validly served upon the taxpayer.

Here, the records of the case do not provide traces of petitioner's receipt of PAN. No independent evidence, such as registry receipt, proof of mailing, or any certification from the Post Office was presented to support respondent's claim that PAN was sent and received by petitioner. Thus, We are convinced that respondent fell short of the requirements to adduce competent evidence to establish petitioner's actual receipt of PAN.

On the other hand, the Post Reporting Notice (Notice) cannot take the place of a PAN in this case. The law and its implementing regulation essentially require respondent to inform the taxpayer *"in writing of the law*

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[3] *Ibid.*
[4] CTA Case No. 8435, February 18, 2014. Affirmed in Resolution dated April 30, 2014.
[5] CTA EB 1011, August 4, 2014.
[6] CTA Case No. 8496, February 10, 2014. Affirmed in Resolution dated March 21, 2014.
[7] CTA Case No. 8394, September 17, 2014. Affirmed in Resolution dated November 14, 2014.

and the facts on which the assessment is made; otherwise, the assessment shall be void."[8] Here, an examination of the contents of the Notice revealed that it consisted only of the computation of tax liabilities without legal bases upon which the assessments were anchored. The Notice appeared to be based on a tentative computation which underwent revisions as evidenced by a revised computation of deficiency taxes.[9]

Meanwhile, We cannot sustain respondent's argument that petitioner acknowledged its liabilities when it offered a compromise. An offer of compromise is not an admission of any liability under Sec. 27, Rule 130 of the Rules of Court:

> SEC. 27. *Offer of compromise not admissible.* – In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.

Moreover, in the case of *Commissioner of Internal Revenue v. Reyes*,[10] the Supreme Court ruled that an invalid assessment cannot in turn be used as a basis for the perfection of a tax compromise.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision dated August 04, 2014) is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633.
[9] Exhibit "12" for respondent, BIR Records, pp. 276-278.
[10] G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382, 385.

LOVELL R. BAUTISTA
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice