REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BLOAT AND OGLE, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8682

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:
SEP 02 2016
10:00 a.m.

x--x

DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1] filed by petitioner, Bloat and Ogle, Inc. ("BAOI") on July 31, 2013, pursuant to *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to *Section 3(a)(1)*[6], *Rule 4 of the Revised*

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[1] *Records, CTA Case No. 8682, Vol. 1, Petition for Review ("PFR"),* pp. 6-42, with annexes.

[2] "Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

xxx."

[3] *An Act Creating the Court of Tax Appeals, as amended.*

[4] *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.*

[5] *An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.*

[6] "*Sec. 3. Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Rules of the Court of Tax Appeals ("RRCTA")[7], which seeks for the Court to render judgment ordering the assessment related to its alleged deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT") and improperly accumulated earnings tax ("IAET")[8] for taxable year 2007, as well as compromise penalties and surcharges, aggregating Php676,668.43, cancelled and withdrawn.[9]

The Parties[10]

BAOI is a corporation with office address at 18C Strata Suites 300, P. Guevarra St. San Juan, Metro Manila.

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), with powers and functions defined in the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and other tax laws, rules and regulations; with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

The Facts

BAOI filed its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) for the year 2007 on the following dates:

Month	Date filed	Exhibit	Amended	Exhibit
January	2/09/2007	P-9-M[11]	-	-
February	3/05/2007	P-9-L[12]	-	-
March	4/03/2007	P-9-K[13]	-	-
April	5/10/2007	P-9-J[14]	-	-
May	6/08/2007	P-9-I[15]	-	-

(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"

7 *A.M. No. 05-11-07-CTA*, November 22, 2005.
8 *Records, Vol. 1, PFR*, pp. 6-7.
9 *Id.* at 17.
10 *Id., Joint Stipulation of Facts and Issues ("JSFI"), Admissions*, p. 217.
11 *Id., Exhibit "P-9-M," BIR Form No. 1601-C, January 2007*, p. 455.
12 *Id., Exhibit "P-9-L," BIR Form No. 1601-C, February 2007*, p. 453.
13 *Id., Exhibit "P-9-K," BIR Form No. 1601-C, March 2007*, p. 451.
14 *Records, Vol. 1, Exhibit "P-9-J," BIR Form No. 1601-C, April 2007*, p. 449.
15 *Id., Exhibit "P-9-I," BIR Form No. 1601-C, May 2007*, p. 447.

June	7/09/2007	P-9-H[16]	-	-
July	8/09/2007	P-9-G[17]	-	-
August	9/07/2007	P-9-F[18]	-	-
September	10/09/2007	P-9-E[19]	-	-
October	11/12/2007	P-9-D[20]	-	-
November	12/10/2007	P-9-C[21]	-	-
December	1/14/2008	P-9-B[22]	2/11/2008	P-9-A[23]

On February 11, 2008, BAOI filed an Amended Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF), together with an Alphalist of Employees as of December 31 with no previous employer within the year.[24] On the same date, it filed its Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E).[25]

BAOI has been consistently filing the above-stated returns using its old registered address - <u>Unit 1404 Medical Plaza Ortigas Condo., 25 San Miguel Avenue, Pasig City, 1605</u>.

On March 1, 2008, BAOI filed an Application for Registration Information Update[26] (BIR Form No. 1905), changing its registered address to <u>Unit 18C Strata 300, P. Guevarra St., San Juan City, 1500</u>.

On April 15, 2008, BAOI filed its Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the 1st[27], 2nd[28], 3rd[29], and 4th[30] Quarters of 2007 and its Annual Income Tax Return[31] (BIR Form No. 1702) for 2007, using its old registered address.

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[16] *Records, Vol. 1, Exhibit "P-9-H," BIR Form No. 1601-C, June 2007,* p. 445.
[17] *Id., Exhibit "P-9-G," BIR Form No. 1601-C, July 2007,* p. 443.
[18] *Id., Exhibit "P-9-F," BIR Form No. 1601-C, August 2007,* p. 441.
[19] *Id., Exhibit "P-9-E," BIR Form No. 1601-C, September 2007,* p. 439.
[20] *Id., Exhibit "P-9-D," BIR Form No. 1601-C, October 2007,* p. 437.
[21] *Id., Exhibit "P-9-C," BIR Form No. 1601-C, November 2007,* p. 435.
[22] *Records, Vol. 1, Exhibit "P-9-B," BIR Form No. 1601-C, December 2007,* p. 433.
[23] *Id., Exhibit "P-9-A," BIR Form No. 1601-C, December 2007 - Amended,* p. 432.
[24] *Id., Exhibit "11-A," BIR Form No. 1604-CF, 2007,* p. 465.
[25] *Id., Exhibit "11-B," BIR Form No. 1604-E, 2007,* pp. 467-468.
[26] *Id., Exhibit "P-13," BIR Form No. 1905,* p. 483.
[27] *Id., Exhibit "P-11-C," BIR Form No. 2307, 1st Quarter,* p. 469; see attachment *Exhibit "P-11-G,"* pp. 473-474.
[28] *Records, Vol. 1, Exhibit "P-11-D," BIR Form No. 2307, 2nd Quarter,* p. 470; see attachment *Exhibit "P-11-H,"* pp. 475-476.
[29] *Id., Exhibit "P-11-E," BIR Form No. 2307, 3rd Quarter,* p. 471; see attachment *Exhibit "P-11-I,"* pp. 477-478.
[30] *Id., Exhibit "P-11-F," BIR Form No. 2307, 4th Quarter,* p. 472; see attachment *Exhibit "P-11-J,"* p. 479.
[31] *BIR Records, Exhibit "R-36,"* pp. 11-23, with annexes.

On October 13, 2008, BIR Revenue Region No. 7 ("RR No. 7"), Revenue District No. 43, Pasig City, issued Tax Verification Notice ("TVN") No. 2003 00121121[32] covering all internal revenue taxes of petitioner for taxable year 2007, along with a First Notice[33], both addressed to petitioner at its old registered address and received by petitioner's representative, a certain Lucil Vargas, on October 25, 2008.

On November 4, 2008, RR No. 7, Revenue District No. 43, Pasig City, issued its Second Request for Presentation of Records[34], which was sent by registered mail to petitioner on November 7, 2008. However, the same were returned to sender with a note on the envelope which reads: "RTS moved out 11/11/08."

Revenue District No. 43, Pasig City then issued an undated Third and Final Notice[35] with the following address - "Formerly [*sic*] address: 18C Strata Suites 300 P. Guevarra St.," the new registered address of petitioner. This was received by petitioner's representative, a certain Connie S. Galan.[36]

On June 25, 2009, the Office of the Pasig City Treasurer issued a Certification that petitioner has retired its business license on February 11, 2008.[37] This was followed by a letter dated July 9, 2009 from the Barangay Chairman of Barangay San Antonio, Pasig City, stating that petitioner has yet to secure a Barangay Clearance for a Business Permit for 2008.[38]

On August 27, 2009, the Chief of the Legal Division of RR No. 7 issued a *Subpoena Duces Tecum*[39] against the President of petitioner at its old registered address, this was sent to petitioner by registered mail on September 3, 2009.

On September 14, 2009, the Senior Property Manager of Medical Plaza Ortigas Condominium Corporation issued a Certification[40]

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[32] *BIR Records, Exhibit "R-36,"* p. 1.
[33] *Id.* at 2.
[34] *Id.* at 24-25.
[35] *Id.* at 29.
[36] *Id.*
[37] *Id.* at 118.
[38] *BIR Records, Exhibit "R-36,"* p. 117.
[39] *Id.* at p. 120.
[40] *Id.* at 123.

stating that petitioner is a former tenant at Unit 1404 located at Medical Plaza Ortigas, 25 San Miguel Avenue, Pasig City; that petitioner is no longer occupying the said unit; and that has moved out two (2) years ago with no forwarding address or contact number given.

On October 13, 2010, a Notice of Informal Conference was sent to BAOI *via* registered mail at its new address.[41]

On December 28, 2010, the Assessment Division of BIR RR No. 7 issued a Formal Letter of Demand ("FLD")[42] with Demand Number 043A-B190-07, with attached Details of Discrepancies[43] and Final Assessment Notices ("FAN") for Income Tax[44], VAT[45], Withholding EWT[46], Improperly Accumulated Earnings Tax[47], and Compromise Penalty[48] at the address 16F Strata Suites, 300 P. Guevarra St., San Juan, Metro Manila. The FLD contains the following details:

I. DEFICIENCY INCOME TAX

Taxable Income (loss) *per* ITR			[Php]	116,759.00
Add: Adjustments *per* investigation				
Salaries and Wages not subjected to withholding tax	[Php]	125,537.10		
Income payments not subjected to withholding tax		31,144.17		
Non-deductible representation expense		17,225.45		173,906.72
Taxable Income *per* investigation			**[Php]**	**290,665.72**
Income tax due thereon			[Php]	101,733.00
Less: Disallowed tax credits/payments				
Payments	[Php]	20,756.00		
Creditable Withholding Tax (CWT)		20,110.00		
Total	[Php]	40,866.00		
Less: Unsupported creditable Withholding Tax		10,060.00	[Php]	30,806.00
Deficiency Income Tax			[Php]	70,927.00
Add: 20% Interest *p.a.* (04.16.08 to 1.28.11)				39,524.80*
TOTAL AMOUNT DUE			**[Php]**	**110,451.80***

II. DEFICIENCY VALUE ADDED TAX

Taxable Revenue *per* returns	[Php]	2,147,400.00
Add: Adjustments *per* investigation		-
Unsupported Exempt and Zero Rated Sales		225,000.00
Revenue subject to VAT per investigation	[Php]	2,372,400.00
Output Tax Due	[Php]	284,688.00
Less: Allowed Tax Credits/Payments:		

[41] *Records, Vol. 1, Exhibit "R-14," Notice of Informal Conference ("NIC"),* pp. 130-135, with annexes.
[42] *Id., Exhibit "P-1," Formal Letter of Demand ("FLD"),* pp. 382-384.
[43] *Id., Exhibit "P-1,"* pp. 385-386.
[44] *Id., Exhibit "P-2,"* p. 387.
[45] *Id., Exhibit "P-2-A,"* p. 388.
[46] *Id., Exhibit "P-2-B,"* p. 389.
[47] *Records, Vol. 1, Exhibit "P-2-C,"* p. 390.
[48] *Id., Exhibit "P-2-D,"* p. 391.

Input tax	[Php]	46,695.93		
Tax Payments		210,992.51		
Total	[Php]	257,688.44		
Less: Disallowed Input Tax from Unsupported Purchases on importation		710.85		
Disallowed Input Tax attributable to exempt sales		3,444.52	[Php]	253,533.07
Deficiency VAT			[Php]	31,154.93
Add: 20% Interest *p.a.* (01.26.08 to 1.28.11)				18,744.17*
TOTAL AMOUNT DUE			**[Php]**	**49,899.10***

III. DEFICIENCY EXPANDED WITHHOLDING TAX

		Amount	*Tax Rate*		*Tax Due*
Rental	[Php]	6,006.25	5%	[Php]	300.31
Payments to contractors/subcontractors to their Regular Supplier of Services:		25,137.92	2%		502.76
Deficiency Expanded Withholding Tax				[Php]	803.07
Add: 20% Interest *p.a.* (01.26.08 to 1.28.11)					487.56*
TOTAL AMOUNT DUE				**[Php]**	**1,290.63***

IV. IMPROPERLY ACCUMULATED EARNINGS TAX

Improperly Accumulated Earnings			[Php]	245,469.89
Tax Rate				10%
Improperly Accumulated Earnings Tax			[Php]	24,546.99
Add: 25% Surcharge	[Php]	6,136.75*		
20% Interest *p.a.* (01.16.09 to 1.28.11)		13,679.06	[Php]	19,815.81
TOTAL AMOUNT DUE			**[Php]**	**44,362.80***

* ***Please note that the interest and the total amount due will have to be adjusted if paid beyond January 28, 2011.***

On January 28, 2011, BIR RR No. 7 received BAOI's administrative protest[49] dated January 27, 2011, disputing the FLD and the FAN.

On March 29, 2011, BIR RR No. 7 received BAOI's submission[50] of the relevant documents in support of its protest.

On June 19, 2013, Ms. Ruth Vivian G. Gadia, Chief of Collection Division, RR No. 7, wrote[51] BAOI informing it of the reassignment of its case to Revenue Officer ("RO") Remedios May Roque ("Ms. Roque"), who shall proceed with the collection of the said outstanding deficiency taxes through summary remedies; and requesting it "to settle the tax liabilities within ten (10) days from receipt of the notice, otherwise, they shall be constrained to enforce the collection thru administrative summary remedies provided for by law, without further notice."

[49] *Records, Vol. 1, Exhibit "P-3,"* pp. 392-397.
[50] *Id., Exhibit "P-4,"* pp. 398-403.
[51] *Id., Exhibit "P-5,"* p. 404.

On July 31, 2013, BAOI filed the instant Petition for Review.[52]

On September 9, 2013, the Court issued Summons[53] to respondent, ordering her[54] to file her[55] Answer to the Petition for Review within fifteen (15) days from receipt thereof.

On October 25, 2013, respondent filed her[56] Answer[57], raising the issue of jurisdiction of the Court over the Petition for Review as her[58] special and affirmative defense. Respondent alleged that the letter dated June 19, 2013 does not constitute a Final Decision on Disputed Assessment ("FDDA").[59]

Pre-trial Conference ensued on June 26, 2014[60]. The parties, through their respective counsels, filed their Joint Stipulation of Facts and Issues ("JSFI")[61] on July 11, 2014. Thereafter, on July 30, 2014, a Pre-trial Order[62] was issued by the Court terminating pre-trial and setting the date/s for the presentation of evidence by the parties.

On July 31, 2014, BAOI presented its lone witness, Ms. Concepcion S. Galan ("Ms. Galan"),[63] Assistant Corporate Secretary of BAOI, who testified, through her Judicial Affidavit[64], that they have not received any Preliminary Assessment Notice ("PAN"); that they received the FLD and the FAN; that they filed a protest against the FLD and FAN; that they did not hear anything from BIR RR No. 7 after filing their protest; and that they received the letter dated June 19, 2013, requiring it to settle its tax liabilities. Ms. Galan was not cross-examined by respondent's counsel.[65] BAOI was granted ten (10) days within which to file its Formal Offer of Evidence ("FOE"), and counsel

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[52] *Records, Vol. 1, PFR,* pp. 6-42, with annexes.
[53] *Id.,* at 54.
[54] Now "his."
[55] *Id.*
[56] *Id.*
[57] *Records, Vol. 1, Answer,* pp. 59-61; on September 24, 2013, respondent filed a Motion for Extension of Time to File Answer praying for an additional period of thirty (30) days within which to file an Answer. This Motion was later granted by the Court in its September 25, 2013 Order.
[58] Now "his."
[59] *Records, Vol. 1, Answer,* p. 61.
[60] *Id., Minutes of Hearing dated June 26, 2014,* p. 215.
[61] *Id., Joint Stipulation of Facts and Issues ("JSFI"),* pp. 217-225.
[62] *Id., Pre-Trial Order ("PTO"),* pp. 353-363.
[63] *Id., Minutes of Hearing dated July 31, 2014,* p. 364.
[64] *Id., Judicial Affidavit of Ms. Concepcion S. Galan,* pp. 228-347, with annexes.
[65] *Records, Vol. 1, Minutes of Hearing dated July 31, 2014,* p. 364.

for respondent was granted the same period from receipt thereof to file a comment.[66]

On August 14, 2014, BAOI through counsel, filed its FOE (For the Petitioner[67], offering *Exhibits* "P-1," "P-2" to "P-2-D," "P-3," "P-4," "P-5," "P-6," "P-7-A" to "P-7-L," "P-8-A" to "P-8-L," "P-9-A" to "P-9-M," "P-10," "P-11-A" to "P-11-K," "P-12," and "P-13." The Court resolved to admit all evidence offered in its Resolution[68] dated September 16, 2014.

During trial, respondent presented the following witnesses: *(1)* Revenue Officers ("RO") Ofelia T. Yumang, ("Ms. Yumang")[69], who testified[70] that she conducted the examination of the accounting and other business records of BAOI for taxable year 2007, that after investigation, it was discovered that BAOI is liable for deficiency income tax, VAT, EWT and IAET, and that she recommended the issuance of a PAN; *(2)* RO Elmer O. Jimenez ("Mr. Jimenez")[71], who testified[72] that he conducted the re-investigation of the audit/examination of the 2007 tax case of BAOI, and that he prepared a report and recommended that the case be forwarded to the Collection Division for the collection of the deficiency taxes of BAOI; and *(3)* RO Norlika B. Datu-Haron[73], who testified[74] that she prepared a Preliminary Collection Letter for BAOI requesting payment of its tax liabilities, and that she also sent a Final Notice Before Issuance of Warrant and Distraint of Levy.

During the hearing on June 8, 2015, counsels for respondent manifested that they have no more witnesses to present, thus, they were granted ten (10) days to file their FOE and BAOI was granted the same period to file its comment.[75]

On July 1, 2015, respondent filed her[76] FOE[77], offering *Exhibits*

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[66] *Records, Vol. 1, Minutes of Hearing dated July 31, 2014,* p. 364.
[67] *Id., Petitioner's Formal Offer of Evidence ("FOE"),* pp. 370-483, with annexes.
[68] *Id.* at 489-490.
[69] *Id., Minutes of Hearing dated December 4, 2014,* p. 504.
[70] *Id., Exhibit "R-17," Judicial Affidavit of Ms. Ofelia T. Yumang,* pp. 175-214, with annexes.
[71] *Id., Vol. 2, Minutes of Meeting dated June 8, 2015,* p. 535.
[72] *Records, Vol. 1, Exhibit "R-34," Judicial Affidavit of Mr. Elmer O. Jimenez,* pp. 511-522, with annexes.
[73] *Id.* at 535.
[74] *Id., Exhibit "R-32," Judicial Affidavit of Ms. Norlika B. Datu-Haron,* pp. 525-532, with annexes.
[75] *Id., Vol. 2, Minutes of Meeting dated June 8, 2015,* p. 535.
[76] Now "his."
[77] *Records, Vol. 2, Respondent's FOE,* pp. 540-607, with annexes

"R-1," "R-2," "R-2-A," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12," "R-13," "R-14," "R-15," "R-16;" "R-17," "R-18," "R-19," "R-20," "R-21," "R-22," "R-23," "R-26," "R-27," "R-28," "R-29," "R-30," "R-30-A," "R-32," "R-32-A," "R-34," "R-34-A," and "R-36." The Court resolved to admit all of respondent's exhibits in its Resolution[78] dated September 9, 2015. The parties were, then, ordered to file their respective memoranda within thirty (30) days from notice.[79]

On October 19, 2015, BAOI filed a Memorandum for the Petitioner[80], while respondent failed to file her[81] Memorandum *per* Records Verification Report[82] issued by the Court's Judicial Records Division dated December 17, 2015. Thereafter, the Court resolved to submit the case for decision through its Resolution[83] dated January 6, 2016; hence, this decision.

The Issues[84]

1. WHETHER BAOI IS LIABLE FOR ALLEGED DEFICIENCY INCOME TAX, VAT, EWT, AND IAET FOR TAXABLE YEAR 2007, AS WELL AS COMPROMISE PENALTIES AND SURCHARGES, AGGREGATING PHP676,668.43;

2. WHETHER THE ASSESSMENT AGAINST BAOI HAS BECOME FINAL, EXECUTORY AND DEMANDABLE BY REASON OF ITS FAILURE TO FILE THE PETITION FOR REVIEW IN ACCORDANCE WITH THE PERTINENT PROVISIONS OF THE *1997 NIRC;*

3. WHETHER THE PRESENT ASSESSMENT HAS ALREADY PRESCRIBED; AND

4. WHETHER BAOI HAS BEEN DENIED OF ITS RIGHT TO DUE PROCESS BY ITS NON-RECEIPT OF THE PAN.

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[78] *Records, Vol. 2,* pp. 618-619.
[79] *Id.* at 618.
[80] *Id., Petitioner's Memorandum,* pp. 625-644.
[81] Now "his."
[82] *Records, Vol. 2,* p. 645.
[83] *Id.* at 647.
[84] *Id., Vol. 1, PTO,* p. 354.

Petitioner's Arguments[85]

BAOI claims that the assessment has not become final, executory and demandable because it timely filed the Petition for Review; that the letter dated June 19, 2013 constituted respondent's FDDA which is the proper subject of a judicial appeal.

It maintains that it is not liable for alleged deficiency Income Tax, VAT, EWT, and IAET for taxable year 2007, as well as for compromise penalties and surcharges; that the alleged discrepancy between the amount of declared salaries and wages under its audited financial statements and BIR Form 1601-C has been properly accounted for when it filed an amended BIR Form No. 1601-C for the month of December 2007; and that it has sufficiently proven that it has properly withheld taxes on salaries and wages, thus, there is no discrepancy.

Lastly, it contends that it was denied of its right to due process when it did not receive the PAN; that the first notice received by BAOI was the FAN and the FLD which were received sometime in January 2011; and that respondent's right to assess for taxable year 2007 has already prescribed pursuant to *Section 203 of the 1997 NIRC.*

Respondent's Counter-Arguments[86]

In her[87] Answer, respondent raised the issue of jurisdiction, stating that the Court has no jurisdiction over the instant Petition for Review because the letter dated June 19, 2013, signed by the Chief of the Collecting Division, is not the FDDA.

The Ruling of the Court

The Court has jurisdiction over the instant case.

Section 7 of RA No. 1125, as amended, in relation to *Section 2, Rule 4 of the RRCTA*, defines the jurisdiction of the Court.

[85] *Records, Vol. 2, Petitioner's Memorandum*, pp. 625-644.
[86] *Id., Vol. 1, Answer*, pp. 59-61.
[87] Now "his."

Section 7 of RA No. 1125, as amended, provides as follows:

> Sec. 7. *Jurisdiction.* - The Court of Tax Appeals 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.

Section 2, Rule 4 of the RRCTA states the following:

> *Rule 4. Jurisdiction of the Court*
>
> xxx xxx xxx
>
> *Sec. 3. Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx.

Respondent asserts that the letter[88] dated June 19, 2013, signed by the Chief of the Collection Division of BIR RR No. 7, is not the

[88] *Records, Vol. 1, Exhibit "P-5,"* p. 404.

FDDA.

The Court does not agree.

In *Oceanic Wireless Network Inc. v. Commissioner of Internal Revenue*[89], the Supreme Court held that a demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment; and that the determination on the issue of whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer. The June 19, 2013 Letter reads as follows:

> **Bloat And Ogle, Inc.**
> **18C Strata Suites 300 Guevarra**
> **San Juan, Metro Manila**
>
> Re:
>
> | Assessment Notice No./s. | Tax Type | Period/s |
> |---|---|---|
> | 043A-B-190-07 | IT, VAT, WE, IAET, CP | 2007 |
>
> TOTAL AMOUNT DUE: [Php]676,668.43
>
> In view of the creation of the Arrears Management Team and the centralization of the collection enforcement function in the collection Division of this Region, please be informed that the enforcement of the abovementioned case has been reassigned to Revenue Officer **REMEDIOS MAY ROQUE** pursuant to Memorandum of Assignment (MOA) No. 1186-IT/VT-EWT/IAET/CP-043A dated April 15, 2013. Consequently, **RO R.A. ROQUE** shall proceed with the collection of the said outstanding deficiency taxes through summary remedies.
>
> In this connection, you are requested to settle the above stated tax liability within ten (10) days from receipt of this Notice. Otherwise, we shall be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice.[90]

According to the letter, in the event wherein BAOI fails to pay the alleged deficiency taxes, the BIR "shall proceed with the collection of the said outstanding deficiency taxes through summary remedies." It emphasizes the final nature of the letter, thus, it is right for the BAOI

[89] G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[90] Emphases retained.

to consider this as the final decision on its protest, which prompted it to file the instant Petition for Review.

Having determined that the letter is the final decision of the respondent on BAOI's protest filed on January 28, 2011, the Court will now discuss whether the Petition for Review was filed within the period provided by law.

Section 228 of the 1997 NIRC, is instructive, 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 . . . Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) — day period; otherwise, the decision shall become final, executory and demandable.[91]

BAOI received the letter dated June 19, 2013 on July 4, 2013, hence, it had thirty (30) days therefrom or until August 5, 2013[92] to file the Petition for Review. On July 31, 2013, or twenty seven (27) days after receipt of the letter, the Petition for Review was filed, well within the period provided by law. Thus, the Court has jurisdiction over the instant case.

There was a denial of due process due to the non-service of the PAN to BAOI.

[91] Underscoring ours.
[92] The last day fell on August 3, 2013, a Saturday.

BAOI claims that it was denied of its right to due process because it did not receive the PAN for the year 2007. BAOI's witness Ms. Galan, stated in her JA[93] that they received the FLD and FAN, but they did not receive the PAN or any document similar to it, this was not controverted by respondent during the presentation of Ms. Galan as witness. Neither was this refuted by any of respondent's witnesses. In her[94] Answer, respondent merely stated that she[95] "specifically denies the allegations contained in paragraph 19 under the heading [']Denial of Due Process['] on page 11 of the Petition for Review for being false; the truth of the matter is that the Preliminary Assessment was properly sent to the BAOI." No proof was presented to support its claim that the PAN was sent to BAOI.

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[96], the Supreme Court held, *viz.*:

> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to 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. xxx Thus as held by the Supreme Court in *Gonzalo P. Nava v[]. 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-

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[93] *Records, Vol. 1, Judicial Affidavit of Ms. Concepcion S. Galan,* p. 234.
[94] Now "his."
[95] Now "he."
[96] G.R. No. 150764, August 7, 2006, 498 SCRA 126.

> 57 citing Enriquez v[]. Sunlife Assurance of Canada, 41 Phil. 269)."
>
> .... 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.
>
> 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 government's right to issue an assessment for the said period has already prescribed. xxx

Based on the records, on March 1, 2008, BAOI updated its registered address from <u>Unit 1404 Medical Plaza Ortigas Condo., 25 San Miguel Avenue, Pasig City, 1605</u> to <u>Unit 18C Strata 300, P. Guevarra St., San Juan City, 1500</u>.[97] When the BIR issued a TVN[98] with a First Notice[99] to BAOI's old registered address, it was still received by petitioner's representative. By the time the BIR tried to send a Second Request for Presentation of Records[100] to BAOI by registered mail, it was returned to sender with a note that BAOI has already moved out. Therefore, when the BIR issued a Third and Final Notice[101], it was delivered to the new registered address of BAOI and rightfully received by its representative.[102]

On top of BAOI's update of its registered address and the fact that the Third and Final Notice was already correctly delivered to the new registered address, at the request of the BIR, the Office of the Pasig City Treasurer likewise issued a Certification that BAOI has retired its

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[97] *Records, Vol. 1, Exhibit "P-13," BIR Form No. 1905*, p. 483.
[98] *BIR Records, Exhibit "R-36,"* p. 1.
[99] *Id.* at 2.
[100] *Id.* at 24-25.
[101] *Id.* at 29.
[102] *Id.*

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business license on February 11, 2008,[103] and the Barangay Chairman of Barangay San Antonio, Pasig City issued a statement that BAOI did not secure a Barangay Clearance for a Business Permit for taxable year 2008.[104]

Despite these, a *Subpoena Duces Tecum*[105] was still issued against the President of BAOI at its old registered address. Thereafter, and likewise at the request of the BIR, the Senior Property Manager of the building wherein the old address was located issued a Certification[106] that BAOI was a tenant therein until two (2) years ago and has since moved out. Thereafter, a Notice of Informal Conference was sent to BAOI *via* registered mail at its new address.[107]

Nonetheless the undated PAN[108] was still addressed to BAOI at its old registered address. This discrepancy remained unexplained by respondent, neither did she[109] provide proof to support the claim that the PAN was indeed sent to BAOI. Thus, for failure to establish that the PAN was sent and received by BAOI, the presumption that the PAN was never issued to BAOI remains, which is a violation of BAOI's right to due process.

Section 228 of the 1997 NIRC and *Revenue Regulation (R.R.) No. 12-99*[110] clearly state that the taxpayer shall be informed in writing of the law and the facts on which the assessment is based and it should be given the opportunity to respond to the PAN. It further provides that in the event that the taxpayer fails to respond to the PAN, the

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[103] *BIR Records,* pp. 118.
[104] *BIR Records, Exhibit "R-36,"* p. 117.
[105] *Id.* at 120.
[106] *Id.* at 123.
[107] *Records, Vol. 1, Exhibit "R-14," NIC,* pp. 130-135, with annexes.
[108] *Id., Exhibit "R-15,"* pp. 136-139.
[109] Now "he."
[110] "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
xxx

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

3.1.1 *Notice for informal conference.* — 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. <u>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</u>, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx"

corresponding assessment will be issued.

The Supreme Court has already ruled that failure to strictly comply with the notice requirements prescribed under *Section 228 of the 1997 NIRC*, as amended and *RR No. 12-99*, is a denial of due process.

In the case of *CIR v. Metro Star Superama, Inc.*[111], the Supreme Court held:

> 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 first 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
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> 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 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.
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Applying the foregoing to the instant case, respondent failed to observe due process when it did not serve the PAN to BAOI. Thus, the FLD and the FAN that was issued is void.

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[111] G.R. No. 185371, December 28, 2010, 637 SCRA 633.

It is likewise noteworthy to point out that despite the fact that the BIR has been inconsistently using the new registered address of BAOI to send notices and other documents, it still sent the FLD[112] and FAN[113] at another address - 16F Strata Suites, 300 P. Guevarra St. San Juan, Metro Manila.

The Supreme Court, in the case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,[114] citing *Commissioner of Internal Revenue v. Metro Star Superama*, held that, in balancing the scales between *(1)* the State's power to tax and the right to prosecute perceived transgressors of the law, and *(2)* the constitutional rights of a citizen to due process of law and the equal protection of the laws, the scales must tilt in favor of the latter, for a citizen's right is amply protected by the Bill of Rights. Thus, while taxes are the lifeblood of the government, it has its limits, in spite of all its plenitude and must be exercised reasonably and in accordance with the prescribed procedure.[115]

Considering the foregoing, the Court finds it unnecessary to discuss the other issues raised for being moot and academic.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** The Formal Letter of Demand No. 043A-B190-07 dated December 28, 2010, as well as Assessment Notices for deficiency income tax, value added tax, expanded withholding tax, improperly accumulated earnings tax, along with compromise penalties and surcharges, amounting to Php676,668.43 for taxable year 2007, are hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[112] *Records, Vol. 1, Exhibit "P-1," FLD,* pp. 383-386.
[113] *Id., Exhibits "P-2," P-2-A," "P-2-B," "P-2-C,"and "P-2-D,"* pp. 387-391.
[114] G.R. No. 197515, July 2, 2014, 729 SCRA 113.
[115] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO Associate Justice	**MA. BELEN M. RINGPIS-LIBAN** Associate Justice

A T T E S T A T I O N

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to *Section 13 of Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice