REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2073** (CTA Case No. 8867)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
MANILA MEDICAL SERVICES, INC. (MANILA DOCTORS HOSPITAL), Respondent.	**Promulgated:** OCT 29 2020 4:16 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) seeking the nullification of the

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[1] Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —
...
(b) Any party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

Decision dated 30 January 2019[2] of the Court's Special Third Division[3] and the subsequent Resolution dated 09 May 2019[4] on petitioner's Motion for Reconsideration (**MR**) in CTA Case No. 8867, entitled *Manila Medical Services, Inc. v. Commissioner of Internal Revenue.*

Petitioner CIR is the chief of the Bureau of Internal Revenue (**BIR**), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith.

Respondent Manila Medical Services, Inc. (Manila Doctors Hospital) [**respondent/MMSI**], on the other hand, is a domestic corporation established primarily to operate, manage, own and maintain hospitals, medical and chemical laboratories and such other enterprises, which may have similar or analogous undertakings or dedicated to services in connection therewith.

The antecedent facts follow.

Petitioner issued Letter of Authority (**LOA**) No. 00000722[5] dated 20 May 2010 and Electronic LOA No. LOA-033-2010-00000095[6] dated 02 September 2010, respectively, for the audit investigation of respondent's books of accounts covering calendar year (**CY**) 2009.[7] Thereafter, petitioner issued Letter Notice No. 116-TRS-09-00-00040 dated 30 May 2011, with attached Details of Withholding Agents/Payors and Payees Income Receipts Records.[8]

On 19 November 2012, petitioner executed a Waiver[9] of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (**NIRC**) of 1997, as amended, (**Waiver**).

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 Division Docket, Volume II, pp. 1078-1099.

3 With Hon. Justice Esperanza R. Fabon-Victorino as *ponente* and Hon. Ma. Belen M. Ringpis-Liban, concurring.

4 Division Docket, Volume III, pp. 1125-1131.

5 Exhibit "R-3", BIR Records, p. 309.

6 Exhibit "R-4", id., p. 310.

7 Paragraph 7, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 387.

8 Paragraph 8, id.

9 Exhibit "P-25", Division Docket, Volume I, p. 559.

Later, respondent received a Notice of Informal Conference[10] (**NIC**) dated 19 February 2013, indicating its deficiency Income Tax (**IT**), Value-Added Tax (**VAT**), and Expanded Withholding Tax (**EWT**).

On 15 July 2014, respondent received a Warrant of Distraint and/or Levy[11] (**WDL**), indicating therein its alleged deficiency IT, VAT and EWT, plus increments and compromise penalty for CY 2009 in the aggregate amount of ₱127,563,834.51.

Consequently, or on 13 August 2014, within thirty (30) days from the receipt of the WDL, respondent filed its Petition for Review (CTA Case No. 8867) before this Court and the same was raffled to the Court's Special Third Division.[12]

After conducting trial, the Court's Special Third Division found merit in respondent's Petition for Review and cancelled the assessment against it. The dispositive portion of the assailed 30 January 2019 Decision[13] reads:

> ...
>
> **WHEREFORE**, the instant Petition for Review filed on August 13, 2014, by petitioner [now respondent] Manila Medical Services, Inc. (Manila Doctors Hospital), is hereby **GRANTED**.
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> Accordingly, the Assessment Notices issued against [respondent] Manila Medical Services, Inc. (Manila Doctors Hospital) by [petitioner] Commissioner of Internal Revenue for alleged deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax, including compromise penalties, in the aggregate amount of ₱127,563,834.51 for taxable year 2009, as well as the Warrant of Distraint and/or Levy dated July 10, 2014, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**
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> ...

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10 Exhibit "P-7", id., pp. 511-514.
11 Exhibit "P-6", id., p. 509.
12 Originally the Third Division but re-constituted to a Special Third Division after the retirement of Justice Lovell R. Bautista.
13 Supra at note 2.

Petitioner sought the reconsideration of the above Decision but the same was denied in the similarly assailed 09 May 2019 Resolution[14] that reads:

> ...
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> **WHEREFORE**, respondent's *Motion for Reconsideration* dated February 19, 2019 is **DENIED**. The impugned Decision of January 30, 2019 is **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

Undaunted, petitioner filed the instant Petition for Review before the Court *En Banc* assigning this sole error, to wit:

> THE HONORABLE COURT OF TAX APPEALS-SPECIAL THIRD DIVISON ERRED IN GRANTING RESPONDENT'S PETITION FOR REVIEW, AND IN CANCELLING AND SETTING ASIDE THE ASSESSMENT NOTICES AND WARRANT OF DISTRAINT AND/OR LEVY DATED JULY 19, 2014.

In support of the assigned error, petitioner puts forward the following arguments:

First, a valid Preliminary Assessment Notice (**PAN**) was issued to and duly received by respondent or its duly authorized representative. According to him, on 13 December 2013, Revenue Officer (**RO**) Teresita Reyes (**Reyes**) personally served the PAN and a certain Marites Acop (**Acop**), respondent's employee, received the same. Acop likewise received the LOA and the NIC from the BIR.

Second, a valid Final Assessment Notice (**FAN**) and corresponding Letters of Demand were likewise sent through registered mail, on 27 December 2013 and respondent accordingly received them.

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[14] Supra at note 4.

Third, there being a validly executed waiver that extended the prescriptive period for three (3) years, petitioner's right to assess respondent has not yet prescribed.

Fourth, the pharmacy sales to in-patients are not included in the term "hospital services" which are exempt from VAT under Section 109(G)[15] of the NIRC of 1997, as amended. Petitioner argues that respondent failed to provide proof that the sale of drugs was made by respondent's drugstore or pharmacy to its in-patients.

Lastly, the burden of proof to dispute assessment lies with respondent. Tax assessments by revenue examiners enjoy the presumption of validity and correctness, until controverted by the taxpayer against whom the assessment was issued.

Respondent, on the other hand, counters that petitioner's arguments are mere rehash of his previous arguments which the Court's Special Third Division already passed upon and resolved. Notwithstanding this stance, it belabors counter-arguments to petitioner's claims, as summarized below:

First, the Court's Special Third Division correctly found that there was no valid service of the PAN and FAN and respondent did not receive both notices. Even petitioner's witnesses confirmed the absence of proof on its receipt of the PAN. Likewise, that no clear procedure was observed to ensure or confirm its receipt of the FAN after it was mailed, especially that there was no registry return receipt.

Second, respondent echoes the Court's Special Third Division's ruling that the assessment must be cancelled as it was denied due process. As stated, there was no PAN and FAN to speak of as petitioner failed to offer them in evidence.

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[15] **Sec. 109.** – *Exempt Transactions.* –

. . .

(G) Medical, dental, hospital and veterinary services except those rendered by professionals[.]

. . .

Third, the FAN was issued on 27 December 2013 (within fifteen [15] days from the alleged personal service of the PAN on 13 December 2013) thus the BIR failed to fully afford respondent the same fifteen (15) days within which to file its reply to the PAN.

Fourth, petitioner's waiver was void for failing to comply with Revenue Memorandum Order (**RMO**) No. 20-90[16], hence, there was no effective extension of the prescriptive period to assess it. Respondent maintains that, at the time the assessment was issued, the period allowed by law to assess it has already lapsed.

Lastly, respondent remains firm that its sales to in-patients are within the purview of "hospital services" exempt from VAT under Section 109(G) of the NIRC of 1997, as amended. Respondent believes that it has successfully refuted the assessment.

The Court's ruling follows below.

After a careful review of the records of the case, the Court *En Banc* finds no cogent reason to deviate from the Special Third Division's assailed 30 January 2019 Decision and its 09 May 2019 Resolution, respectively. As shown in the records, petitioner's similar contentions (to obtain a reversal of both) have already been exhaustively discussed.

If only to stress our affirmance of the findings of the Court's Special Third Division, We quote the relevant portions of the assailed Decision, to wit:

> ...
>
> [Respondent] strongly denies receipt of the PAN and the FAN issued by [petitioner]. [Petitioner], on the other hand, insists that he validly issued the PAN and the FAN which were both received by [respondent] through its authorized representative Marites Acop. Such declaration was however contradicted by [petitioner's] own witnesses, RO Teresita P. Reyes and Mailing Custodian Armando Macatangay. The first, who claimed to have served the original of the PAN to [respondent], declared that there was nothing in her copy of

16 *Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.*

> the PAN showing that it was actually received by [respondent]. Meanwhile, witness Macatangay admitted that he did not take any step, action, or procedure to verify if the FAN and the FLD were actually received by [respondent]. Moreover, RO Edna A. Ortalla, the Chief of the Assessment Section, BIR Assessment Division, admitted that the copy of the PAN attached to the BIR Record of the case was not the receiving copy of the purported PAN. In other words, there is nothing in the BIR record indicating that the original of the PAN was actually served and received by [respondent] or its duly authorized representative. Intriguingly, [petitioner] only formally offered Exhibit R-55 as his documentary evidence, which the Court over the objection of [respondent], admitted. Clearly, without any supporting documents, the testimonies of [petitioner's] witnesses cannot be given full weight and credence.
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> ...
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> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, the Supreme Court ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997 and RR No. 12-99, as amended, is tantamount to denial of due process. In the said case, the Supreme Court emphasized that the absence of a PAN renders nugatory any assessment made by the tax authorities, to wit:
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> ...
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> A review of the record revealed that the PAN and the FAN were attached to the BIR [R]ecord. This fact notwithstanding, [petitioner] failed to formally offer the PAN, FAN and FLD. [Petitioner] instead formally offered the Certification dated September 25, 2014 issued by the former Chief of Records Unit of the Manila Central Post Rodrigo Romero and marked as Exhibit [R]-55, stating that a mail matter with Registered Mail No. 909401 and addressed to Manila Medical Services, Inc., was delivered by Jose De Guzman on February 4, 2014. However, there is no way by which [the] Court could determine the documents referred to in Registered Mail No. 909401.
>
> And as earlier noted, there was no evidence even in the BIR [R]ecord that [petitioner] was compliant with the notice requirement in the issuance of the subject assessments. Aside from the testimony of [petitioner's] witnesses and the Certification marked as Exhibit [R]-55, there is nothing in the BIR Record of the case showing receipts of the PAN and the FAN issued by [petitioner] against [respondent].
>
> ...

Indeed, when the taxpayer denies receipt of the assessment notices, the burden of evidence to prove that the same are mailed *and* *received* by the taxpayer is shifted to the BIR. In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[17], the Supreme Court held:

> ...
>
> **The failure of the respondent to prove receipt of the assessment by the petitioner leads to the conclusion that no assessment was issued...**
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> ...
>
> ...Receipt thereof by the taxpayer within the prescriptive period is not necessary. **At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive**, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.
>
> ...
>
> In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise the presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a **direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.**
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> ...

In herein case, with respect to the PAN that was allegedly served personally on respondent, petitioner could have easily offered his receiving copy as signed by respondent's authorized representative. Interestingly, as petitioner himself admitted, no receiving copy could be found in the BIR records.

As regards the FAN that was sent through registered mail, petitioner miserably failed to likewise prove that respondent actually received it. Moreover, with the declaration of his own witness that no

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17 G.R. No. 157064, 07 August 2006; Citations omitted and emphasis supplied.

action was taken to ensure respondent's receipt of the FAN, petitioner could not expect the Court *En Banc* to be swayed to his side.

Additionally, even if the Court *En Banc* were to lend succor to petitioner's insistence that there was valid issuance and service of the PAN and FAN, the assessment for deficiency taxes issued against respondent for CY 2009 will nevertheless be struck down as void for failing to comply with the due process requirements. As the Court's Special Third Division found, the supposed FAN was issued before the lapse of the fifteen (15)-day period within which respondent can respond to the PAN.

As stated earlier, the PAN was apparently personally served on respondent on 13 December 2013. Respondent then had until 02 January 2014[18] within which to file its reply thereto. Without waiting for respondent's reply or the expiration of the period given, petitioner mailed the FAN on 27 December 2013. Simply, petitioner's course of action contradicts the mandate of due process.

In the recent case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[19], the Supreme Court held:

> ...
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> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
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> ...
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> ...Again, under Section 228 of the Tax Code and **Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice**; otherwise, he or she will be considered in

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[18] The last day to respond to the PAN was on 28 December 2013, which fell on a Saturday; 29 December 2013 fell on a Sunday; 30 December 2013 and 01 January 2014 were both regular holidays; and, 31 December 2013 was a special non-working holiday.

[19] G.R. Nos. 201398-99, 03 October 2018; Citations omitted and emphasis supplied.

> default and the Final Letter of Demand and Final Assessment Notices will be issued...
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> ...
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> However, **within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices**, reiterating the findings stated in the Preliminary Assessment Notice...
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> ...
>
> This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.
>
> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. This Court explained:
>
> > 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 formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — the taxpayers should be able to present their case and adduce supporting evidence.
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> ...

The assessment for deficiency taxes for CY 2009 against respondent being patently void for the reasons discussed above, We deem it unnecessary to delve into the validity or invalidity of the waiver executed by respondent and the VAT treatment of its sale to in-patients.

A final note. Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, always with regard to the basic tenets of due process.[20]

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated 30 January 2019 and Resolution dated 09 May 2019 are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

20 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, Supra at note 19.

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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice