REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DIRECT CONTAINER LINE PHILS., INC. (Now VANGUARD LOGISTICS SERVICES PHILS., INC.), Petitioner,	**CTA EB No. 1019** (CTA Case No. 7616)
-versus-	Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE , Respondent.	**Promulgated:** AUG 04 2014 *Castpalinario 8:40 a.m.*

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DECISION

CASTAÑEDA, JR. *J.*:

This is a Petition for Review filed by petitioner Direct Container Line Phils., Inc. (Now Vanguard Logistics Services Phils., Inc.) before the Court of Tax Appeals (CTA) *En Banc* praying for the reversal of the Decision,[1] and Resolution,[2] respectively promulgated by the CTA First Division and CTA Special First Division on September 10, 2009 and May 8, 2013, and accordingly, cancel the assessments for deficiency value-added tax ("VAT"), income tax, withholding tax on compensation, and fringe benefits against petitioner for taxable year 2003.

THE FACTS

The facts of the case as found by CTA First Division are as follows:

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[1] *Rollo*, pp. 36-66. Penned by Associate Justice Lovell R. Bautista, with former Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring.
[2] *Ibid.*, pp. 67-69.

Petitioner-Direct Container Line Philippines, Inc. (Petitioner) is a domestic corporation duly organized under Philippine laws, with office address at 15th Floor, Ramon Magsaysay Center, 1680 Roxas Boulevard, Manila. On June 9, 2005, the Securities and Exchange Commission (SEC) approved petitioner's application for amendment of its corporate name to "Vanguard Logistics Services Phils., Inc." It is likewise registered with the Bureau of Internal Revenue (BIR), as evidenced by its Certificate of Registration No. OCNIRC0000202923 dated November 10, 1994. The nature of petitioner's business is freight forwarding services.

Respondent is the duly appointed Commissioner of the BIR, the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. He holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Corporate Income Tax Return (ITR) for taxable year 2003 on April 13, 2004, reflecting the amount of P11,911,287.00 as taxable income and the amount of P3,811,610.00 as tax paid/creditable.

Petitioner filed its Quarterly Value-added Tax (VAT) Returns for taxable year 2003 on the following dates:

Quarter	**Date Filed and Paid**
First	April 25, 2003
Second	July 25, 2003
Third	October 24, 2003
Fourth	January 26, 2003

By virtue of Letter of Authority No. 00000821 dated September 14, 2004 issued by the Regional Director of Revenue Region No. 6 (Manila), revenue officers of Revenue District Office (RDO) No. 33 examined the books and records of accounts of petitioner for the determination of any possible internal revenue tax liabilities for taxable year 2003.

On June 20, 2005, petitioner received a Post-Reporting Notice 5 dated June 14, 2005 from the RDO of Revenue District No. 33, informing petitioner that a report of investigation has been submitted proposing to assess petitioner for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, fringe benefits tax, documentary stamp tax, and improperly accumulated earnings tax in the total amount of P9,685,234.19, inclusive of surcharges, interest, and compromise penalties for taxable year 2003.

Petitioner filed its protest to the Post-Reporting Notice on July 15, 2005. A Supplemental Protest was subsequently filed on August 10, 2005.

In a Letter, dated January 16, 2006, respondent notified petitioner that the case will be forwarded to the Assessment Division for review and disposition, and that the written protest alone did not warrant the cancellation of the proposed assessment; thus, the need to submit documentary evidence to support petitioner's objections/clarifications. Petitioner submitted proof of the tax exemption of its lessor as well as its Agreement with DCL Logistics (HKG) Limited.

On August 22, 2006, petitioner received six (6) separate Formal Letters of Demand, with their corresponding Assessment Notices, all bearing the same number 33-2003 and dated August 8, 2006, for alleged deficiency taxes, and seven (7) separate Formal Letters of Demand for alleged compromise penalties, as follows:

Deficiency Income Tax, plus interest	P	909,327.93
Compromise Penalty		20,000.00
Deficiency Value-Added Tax, plus interest	P	2,407,727.72
Compromise Penalty		25,000.00
Deficiency Withholding Tax on Compensation		P53,576.32
Compromise Penalty		17,000.00
Deficiency Final Withholding Tax plus surcharge and interest	P	837,504.88
Compromise Penalty		16,000.00
Deficiency Fringe Benefits Tax plus surcharge and interest	P	393,337.25
Compromise Penalty		16,000.00
Deficiency Documentary Stamp Tax plus interest	P	189,929.94
Compromise Penalty		16,000.00
Compromise for late filing of 1601E and 1604E	P	4,200.00
TOTAL	P	4,905,604.04

On September 20, 2006, petitioner formally protested the afore-mentioned Letters of Demand and Assessment Notices by filing an Administrative Protest dated September 19, 2006. Jc

Petitioner filed this Petition for Review on April 17, 2007, after respondent failed to issue a reply or decision with regard to its protest and before petitioner could be barred by prescription.

On May 30, 2007, respondent filed his Answer, raising the following Special and Affirmative Defenses:

"6. The Assessment is valid and correct and the Petitioner has the burden of proof to impugn its validity (Behn Meyer and Co. vs. Collector of Internal Revenue, 27 Phil. 647). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).

7. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]).

8. The BIR has issued Pre-Assessment Notice date June 26, 2006 to Direct Container Line Phil., Inc. of 5/F Magsaysay Center, 1680 Roxas Blvd., Malate, Manila and the same was sent to Petitioner by mail. Other communications relative to the findings of the tax investigation, including Post Reporting Notices were also sent to Petitioner, thus, giving Petitioner an opportunity to respond/refute the same. In fact, Petitioner was able to file an administrative protest and eventually, a Petition for Review with the Court of Tax Appeals, concerning the disputed assessment."

Petitioner filed its Pre-Trial Brief [for the Petitioner] on June 18, 2007; while Respondent's Pre-Trial Brief was filed on July 6, 2007.

On July 13, 2007, Pre-Trial Conference was held. The parties filed their Stipulation of Facts and Issues on July 26, 2007, which was approved in a Resolution dated July 31, 2007.

Petitioner filed its Formal Offer of Evidence on December 21, 2007; while respondent made a formal offer of evidence on June 11, 2008.

The case was submitted for decision on September 10, 2008, after considering the Memorandum for the Petitioner filed on August 14, 2008, and Respondent's Memorandum posted on August 29, 2008.

On September 10, 2009, the CTA First Division promulgated a Decision partially granting the Petition for Review, the dispositive portion of which reads 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 final withholding tax in the amount of P837,504.88, documentary stamp tax in the amount of P189,929.94, and compromise penalties in the amount of P114,200.00, are hereby **CANCELLED** and **WITHDRAWN**. However, the assessments for deficiency VAT, income tax, withholding tax on compensation, and fringe benefit tax are hereby **UPHELD**. Accordingly, petitioner is hereby **ORDERED** to **PAY** the aggregate amount of P4,326,317.25, detailed as follows:

	Basic Tax	Surcharge	Interest	Total
Deficiency VAT	P1,593,940.57	P398,485.14	P813,787.15	P2,806,212.86
Deficiency Income Tax	620,232.78	155,058.20	289,095.15	1,064,386.13
Deficiency Withholding Tax on Compensation	35,218.75	8,804.69	18,357.57	62,381.01
Deficiency Fringe Benefit Tax	229,872.84	57,468.21	105,996.20	393,337.25
TOTAL	P2,479,264.94	P619,816.24	P1,227,236.07	P4,326,317.25

> In addition, petitioner is hereby ORDERED to PAY twenty percent (20%) delinquency interest on the amount of P4,326,317.25, computed from September 15, 2006 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997.
>
> **SO ORDERED.**[3]

Aggrieved, petitioner filed on October 2, 2009 a Motion for Partial Reconsideration[4] of the above Decision. On October 27, 2009, respondent filed a Comment/Opposition (To Motion for Partial Reconsideration dated October 1, 2009).[5] *gr*

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[3] *Rollo*, p. 65.
[4] Division Docket, pp. 347-367.
[5] Division Docket, pp. 370-373.

On February 9, 2010, petitioner filed an Urgent Motion[6] praying that the resolution of its Motion for Partial Reconsideration dated October 1, 2009 be held in abeyance pending the action of the respondent on petitioner's application for compromise agreements under Revenue Regulations Nos. 7-2001, 13-2001 and 30-2002.

In a resolution[7] dated June 22, 2010, the CTA Special First Division granted petitioner's Urgent Motion and held in abeyance the resolution of petitioner's Motion for Partial Reconsideration. In the said resolution, the court ordered petitioner to submit status report of its pending application for compromise agreements.

On July 9, 2010, petitioner filed Compliance with Motion[8] accompanied by documents in support of its application for compromise settlement. Respondent, in a Comment/Manifestation (To Petitioner's Compliance With Motion dated July 8, 2010)[9] filed on September 6, 2010, interposed no objection to petitioner's motion. The court *a quo,* in a resolution[10] dated November 11, 2010, granted petitioner's motion and continued to hold in abeyance the resolution of its Motion for Partial Reconsideration with an order to submit quarterly reports on the status of the pending application for compromise settlement.

Despite petitioner's constant follow-ups as stated in its status reports *via* Compliance with Motion,[11] it failed to obtain an approval of its application for compromise settlement. After considering the period lapsed, the court *a quo*, in a Resolution dated May 8, 2013,[12] deemed it proper to resolve petitioner's Motion for Reconsideration. The dispositive portion reads as follows:

> **WHEREFORE,** given the circumstances, "Motion for Partial Reconsideration" filed on October 2, 2009 is hereby **DENIED.**
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> **SO ORDERED.**[13]

Hence, this Petition for Review *En Banc.* Je

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[6] Division Docket, pp. 376-379.
[7] *Ibid.*, pp. 391-392.
[8] *Ibid.*, pp. 393-410.
[9] *Ibid.*, pp. 414-417.
[10] *Ibid.*, pp. 421-422.
[11] *Ibid.*, pp. 437-440; 444-445; 448-450; 454-455; 459-461; 465-467; 471-473; 478-480; 483-485.
[12] *Ibid.*, pp. 487-489.
[13] *Ibid.*, p. 489.

THE ISSUES

Petitioner raises the following grounds:

I.
THE FIRST DIVISION ERRED IN RULING THAT RESPONDENT'S FAILURE TO ISSUE A PRE-ASSESSMENT NOTICE (PAN) TO PETITIONER CANNOT BE CONSIDERED A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS THAT IS GUARANTEED BY SECTION 228 OF THE 1997 NIRC, AS IMPLEMENTED BY SECTION 3 OF RR NO. 12-99.

II.
THE FIRST DIVISION ERRED IN NOT RULING THAT THE DEMAND LETTERS AND ASSESSMENT NOTICES ARE NULL AND VOID DESPITE THEIR FAILURE TO STATE THE FACTUAL AND LEGAL BASES THEREOF AS REQUIRED BY THE LAW AND REGULATIONS.

III.
ASSUMING, BUT NOT ADMITTING, THAT PETITIONER'S RIGHT TO DUE PROCESS WAS NOT VIOLATED, THE 1ST DIVISION ERRED IN NOT HOLDING THAT THE ASSESSMENT FOR DEFICIENCY VAT FOR THE 1ST AND 2ND QUARTERS OF 2003 IS ALREADY BARRED BY PRESCRIPTION.[14]

THIS COURT'S RULING

The petition is partly meritorious.

Preliminary Assessment Notice /preassessment notice (PAN) is a vital part of due process. Petitioner did not receive PAN, hence, he was denied due process.

The taxable year involved is 2003, therefore, We apply the provision of law under Section 228 of the National Internal Revenue Code (NIRC) of 1997 and its implementing Revenue Regulation (RR) No. 12-99. The provisions specifically prescribe the manner by which a valid tax assessment can be had. Both the law and regulations mandate the issuance of the

[14] *Rollo*, pp. 6-7.

preassessment notice or preliminary assessment notice (PAN) as part of the due process requirement in the issuance of a tax assessment. The law 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:** provided, however, that a preassessment notice shall not be required in the following cases:
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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> (d) When the excise tax due on excisable articles has not been paid; or
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> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
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> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
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> 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.
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> 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 eighty (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. (Emphasis ours)

RR 12-99 puts into effect the above-cited provision as follows:

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

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

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the

Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 **Preliminary Assessment Notice (PAN).** — If after review and evaluation by **the Assessment Division or by the Commissioner or his duly authorized representative,** as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office **shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 Exceptions to Prior Notice of the Assessment. — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare

> parts, has been sold, traded or transferred to non-exempt persons. (Emphasis ours)
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Some portions of RR 12-99 were later on amended by RR 018-13, one of which is the removal of the section on Notice of Informal Conference. The pertinent portion of Section 2 of RR 018-13 provides:

> 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:
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> "SEC. 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:
>
> 3.1.1 Preliminary Assessment Notice (PAN). — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).
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> 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. *ge*

3.1.2 Exceptions to Prior Notice of the Assessment. — Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright.

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The application of Section 228 of the 1997 NIRC and RR 12-99 was exhaustively discussed in the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[15] (*Metro Star* case). The Supreme Court held that strict compliance with the notice requirements, as prescribed by the above-cited provisions, 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**

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

> **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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> 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.[16] (Emphasis ours)

We re-examined the records of the instant case given that one of the issues in the petition is the absence of PAN.

Respondent offered in evidence the alleged PAN[17] dated June 26, 2006. Purportedly, it was sent to petitioner through Mr. Paul C. Parazo, a Bureau of Internal Revenue (BIR) employee. Mr. Parazo testified, in his judicial affidavit,[18] that he personally mailed the PAN to petitioner's business address at 5/F R. Magsaysay Center, 1680 Roxas Blvd, Malate, Manila. He further testified that no certification/proof of mailing was issued to him because the Post Office does not maintain records on ordinary mails.

However, petitioner vehemently denied receipt of PAN.

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[16] *Ibid.*
[17] Exhibit "22" for respondent.
[18] Exhibit "50" for respondent.

It should be noted in the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, [19] the Supreme 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. In order for the presumption to arise, two material facts must be proven, the Court wrote:

> 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 this 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.

In the present case, the disputable presumption will not apply because PAN was not properly addressed. Mr. Parazo testified he mailed the PAN in petitioner's previous business address at 5/F R. Magsaysay Center, 1680 Malate, Manila on June 27, 2006. Based on records, petitioner informed respondent the change of address as early as July 8, 2005 as evidenced by an Application for Registration Information Update[20] showing petitioner's new address at 15/F Section A Ramon Magsaysay CTR Roxas Blvd. Respondent did not refute the existence of the said document.

Also, the witness admitted sending the PAN via ordinary mail in violation of RR 12-99 requiring PAN to be issued *at least* by *registered mail.*

Apart from the uncorroborated testimony of Mr. Parazo, 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 BIR's claim that PAN was sent and received by petitioner. Thus, We are convinced that respondent falls short of the requirements to adduce competent evidence to establish petitioner's actual receipt of PAN. *jr*

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[19] G.R. No. 157064, August 7, 2006, 498 SCRA 126 citing *Republic v. Court of Appeals*, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 355.
[20] Exhibit "Z" for petitioner.

The Post Reporting Notice (Notice) lacks legal bases, thus, it cannot take the place of PAN.

We agree that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[21] However, the instant case is not one of those cases where We can simply disregard the due process safeguards in Section 228 of the 1997 NIRC.

While it is true that petitioner received the Post Reporting Notice ("Notice" for brevity) and was able to file a Protest as well as a Supplemental Protest to the Notice, the totality of the circumstances did not meet the minimum requirements of due process.

Looking beyond the title of the Notice, an examination of its contents cannot take the place of a PAN. The law and its implementing regulation essentially require respondent to inform the taxpayer *"in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."*[22] Here, an examination 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.[23]

Hence, in this case, the Notice cannot be considered akin to PAN.

In the case of *Commissioner of Internal Revenue v. Enron Subic Power Corporation*,[24] the Supreme Court ruled that the "factual bases" in the advice, preliminary letter and "audit working papers" are NOT SUFFICIENT to meet the requirements laid down in Section 228 of the 1997 NIRC. The pertinent portion of the ruling reads as follows:

> The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary

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[21] *El Greco Ship Manning and Management Corporation v. Commissioner of Customs*, G.R. No. 177188, December 4, 2008.
[22] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633.
[23] Exhibit "12" for respondent, BIR Records, pp. 276-278.
[24] G.R. No. 166387, January 19, 2009, 576 SCRA 212, 218.

> letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.
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> We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void.

We also revisit the case of *Commissioner of Internal Revenue v. Azucena T. Reyes*[25] where the Supreme Court recognized the compulsory requirements of Section 228 of the 1997 NIRC. It held:

> Tax laws are civil in nature. Under our Civil Code, acts executed against the mandatory provisions of law are void, except when the law itself authorizes the validity of those acts. **Failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code. We cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding.** (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,*[26] the Formal Letter of Demand, Details of Discrepancies and Audit Results/Assessment Notices were cancelled and withdrawn due to lack of PAN. In *SVI Information Services Corporation v. Commissioner of Internal Revenue*,[27] the Preliminary Collection Letter was cancelled for failure of respondent to prove that PAN was delivered to petitioner. In both cases, the presence of a Post Reporting Notice was immaterial.

Assessment for deficiency withholding tax on compensation is

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[25] G.R. Nos. 159694 and 163581, January 27, 2006, 480 SCRA 382.
[26] CTA Case No. 8435, February 18, 2014. Affirmed in Resolution dated April 30, 2014.
[27] CTA Case No. 8496, February 10, 2014. Affirmed in Resolution dated March 21, 2014.

upheld as it falls in one of the exceptions where PAN is not required.

PAN is not required at all times. The provision of law on the requirement of PAN admits exceptions, such as in the following cases:

> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In this case, Assessment for Deficiency Withholding Tax on Compensation falls in one of the exceptions enumerated above. The records of the case showed that there is a difference between the tax withheld and what was actually remitted. Under Section 228 (b) of the NIRC of 1997, there is no need for PAN when the tax withheld does not tally with the amount actually remitted by the withholding agent. Thus, We affirm the findings and the ruling of the Court in Division with respect to the Assessment for Deficiency Withholding Tax on Compensation.

The other remaining issues will no longer be discussed for being moot.

In conclusion, PAN is an indispensable element of due process in accordance with Section 228 of the NIRC of 1997; RR 12-99 as amended by RR 18-2013, and the applicable jurisprudence. For failure to send the PAN stating the facts and the law on which the assessments were made, the assessment made by respondent is void. However, PAN is not required in cases falling within the exceptions, such as in the case of Assessment for Deficiency Withholding Tax on Compensation where a discrepancy has been found between the tax withheld and the amount actually remitted by petitioner.

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.**

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.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice