REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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JONES LANG LASALLE (PHILIPPINES), INC., Petitioner,	**CTA Case No. 9590**
	Members:
- versus -	**UY,** *Chairperson*, **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** JJ
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 12 2020 3:06 p.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review (With Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax)"*[1] filed on May 15, 2017 by Jones Lang Lasalle (Philippines), Inc. (JLL), petitioner, against the Commissioner of Internal Revenue (CIR), respondent, praying to issue an order suspending the collection of the assessed deficiency tax, and setting aside any garnishments, distraints, or levies already effected by the Bureau of Internal Revenue (BIR); annul, reverse and set aside the 8 May 2017 Final Notice Before Seizure; cancel the deficiency value-added tax (VAT) assessment against JLL; and issue an order directing respondent to issue the corresponding Authority to Cancel Assessment.

THE FACTS

Culled from the records and the evidence presented in this case, these are the facts of the case.

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[1] Docket – Vol. 1. pp. 10 to 32.

Petitioner Jones Lang Lasalle (Philippines), Inc. is a corporation duly organized and existing under Philippine Laws to engage in, among others, local and international property consultancy and advisory, agency, project development, and all other real estate services in connection with the real estate property business.[2] Its principal office address is at the 5th Floor BDO Equitable Tower, 8751 Paseo de Roxas, Makati City.[3] Presently, its principal office address is at 19th Floor, NEX Tower, 6786 Ayala Avenue, 1223 Makati City.[4]

On the other hand, respondent is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes, acting through Teresita M. Angeles of the Large Taxpayers Collection Enforcement Division of the Large Taxpayers Service, BIR, Quezon City. He may be served with orders and processes of this Court at BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

On September 3, 2009, respondents issued a Letter Notice No. 047-TRS-07-00-00038,[6] informing petitioner that a computerized matching conducted by respondent on the information/data provided by third-party sources against its declarations per income/ VAT/ percentage/ withholding tax returns, disclosed discrepancies for CY 2007.

Thereafter, respondent issued a *Letter of Authority* (LOA) No. 00016964 on May 11, 2010[7], authorizing Revenue Officer Mario H. Eleda and Team Head Amelita A. Escober to examine petitioner's books of accounts and other accounting records for income tax, VAT, and withholding tax issues based on LN No. 047-TRS-07-00-00038 and other corresponding preprocessed data under RELIEF for taxable year 2007.

An undated *Notice for Informal Conference*[8] was issued by respondent, which was received by petitioner on May 31, 2010,

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[2] Par 5, The Parties, *Petition for Review*, Docket – Vol. 1, p. 12.
[3] Par 5, The Parties, *Petition for Review*, Docket – Vol. 1, p. 12.
[4] Par 1.1, The Parties, *Memorandum*, Docket – Vol. 2, p. 824.
[5] Stipulation of Facts, JSFI, Docket, Vol. 2, p. 736.
[6] Exhibit "P-16", BIR Records, p. 70.
[7] BIR Records, p. 83.
[8] Exhibit "P-8", Docket, Vol 1, p. 270.

requesting petitioner or its duly authorized representative to appear for an informal conference.

On October 8, 2010, respondent issued the *Preliminary Assessment Notice* (PAN)[9] with attached *Details of Discrepancies* assessing petitioner for deficiency VAT for CY 2007 in the amount of ₱7,078,289.04.

Subsequently, respondent issued a *Final Assessment Notice* (FAN) dated October 19, 2011[10] with *Details of Discrepancies* and *Assessment Notice*[11] assessing petitioner for deficiency VAT for CY 2007, in the aggregate amount of ₱7,507,045.30.

A *Collection Letter*[12] dated August 2, 2016 was thereafter issued by respondent against petitioner for the unpaid deficiency VAT in the amount of ₱7,507,045.30.

In response to the *Collection Letter*, petitioner filed a *Letter* dated August 23, 2016[13], requesting copies of relevant documents supporting the deficiency VAT assessment.

On September 7, 2016, petitioner filed another *Letter*[14] reiterating its request for copies of the relevant and necessary documents in support of the Collection Letter.

Thereafter, petitioner filed a Letter[15] on September 19, 2016, stating that the deficiency VAT assessment for CY 2007 and *Collection Letter* should be cancelled.

Respondent then issued the FNBS[16] dated February 28, 2017, which was received by petitioner on May 8, 2017.

Thus, on May 15, 2017, petitioner filed the instant "*Petition for Review (With Urgent Motion for the Issuance of an Order to*

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[9] Exhibit "P-7", BIR Records, pp. 90 to 91.
[10] Exhibit "P-6", Docket – Vol. 1, p 269.
[11] BIR Records, pp. 94 to 96.
[12] Exhibit "P-1, Docket, Vol. 1, pp.119 to 120;
[13] Exhibit "P-9, Docket, Vol. 1, p.134.
[14] Exhibit "P-10, Docket, Vol. 1, p.135 to 136.
[15] Exhibit "P-29, Docket, Vol. 1, pp. 205 to 222.
[16] Exhibit "P-21", Docket, Vol. 1, p. 38.

Suspend the Collection of Tax)". In said urgent motion, petitioner contends that in view of the alleged jeopardy faced by petitioner's business, and the prejudice to the government owing to the illegality of the BIR's collection efforts, the collection attempt of the BIR, through the FNBS, should be enjoined without necessity of depositing the assessed deficiency nor posting a bond, and all of BIR's actions made in furtherance of its collection attempt should be invalidated.

Petitioner's *Urgent Motion* was set for hearing on May 24, 2017 wherein petitioner presented its witness Katrina Urbano in support of said motion.

Respondent filed his *Opposition (Re: Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax)* on May 26, 2017 alleging among others, that petitioner miserably failed to establish the essential requirements for the issuance of preliminary injunction; and that respondent's resort to summary collection remedies is a procedure provided by law. Allegedly, there is no urgent and paramount necessity for a suspension order to issue as there is no real jeopardy upon petitioner's interest as to warrant the issuance of a suspension order.

Subsequently, respondent filed his *Answer* on June 16, 2017,[17] interposing among others, the following affirmative defenses to wit: that the Court has no jurisdiction over the instant *Petition* since the assessment has already become final, executory and demandable; and that the FNBS is not the disputed assessment contemplated by law. Allegedly, all presumptions are in favor of the correctness of tax assessments; and failure to present proof of error in the assessment will justify judicial affirmation of said assessment.

On July 7, 2017, petitioner filed a *Reply*[18] stating that the assessment could not have become final, executory and demandable; and that there was no proper service of the PAN and FAN. Petitioner further argues that the Court has jurisdiction over the present case; while the presumption of correctness of tax assessment does not apply to this case as the subject assessment was issued beyond the ordinary prescriptive period. Petitioner also claims that there was no falsity, fraud, or omission that warrants the application of the extra-ordinary prescriptive period.

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[17] Docket – Vol. 1, pp. 451 to 464.
[18] Docket – Vol. 2, pp. 528 to 542.

In the Resolution dated August 07, 2017[19], the Court denied petitioner's *Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax* for lack of merit. The Court, without prejudging the case, found that petitioner was merely threatened by the sending of the BIR of the Final Notice Before Seizure, but that a Warrant of Distraint and Levy had not been issued by the BIR.

Thus, the Pre-Trial Conference was set on August 29, 2017.[20] By agreement of both parties' counsel, they filed their *Joint Stipulation of Facts and Issues* (JSFI) on September 13, 2017[21] and the Court issued its Pre-Trial Order on October 19, 2017.[22]

During trial, petitioner presented its Treasurer and Head of Finance, Katrina Urbano.[23] On February 26, 2018, petitioner submitted its *Formal Offer of Evidence,*[24] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on February 28, 2018.[25]

In the Resolution dated May 22, 2018[26], the Court admitted most of petitioner's evidence, except for exhibits "P-12", "P-13", "P-14", "P-17", "P-18", "P-18-1", "P-19" and "P-19-1" for failure to present the original for comparison. On June 13, 2018, petitioner filed an *Omnibus Motion for (A) Partial Reconsideration of the Resolution dated 22 May 2018; and (B) Admission of Exhibits "P-12", "P-13", "P-14", "P-18", "P-18-1", "P-19" and "P-19-1" as Secondary Evidence.*[27]

On July 12, 2018, respondent filed an *Opposition (Re: Motion for Reconsideration)*[28] stating that before secondary evidence will be introduced, petitioner should establish the former existence of the said exhibits. Allegedly, petitioner failed to prove that the originals of the documents were eventually lost or destroyed, hence, the supposed secondary evidence must not be admitted.

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[19] Docket – Vol. 2, pp. 549 to 556.
[20] Notice of Pre-Trial Conference, Docket – Vol. 2, pp. 526 to 527.
[21] JSFI, Docket – Vol. 2, pp. 736 to 742.
[22] Docket – Vol. 2, pp. 744 to 751.
[23] Exhibit "P-34", Docket – Vol. 2, pp. 577 to 603.
[24] Docket – Vol. 2, pp. 759 to 776.
[25] Docket – Vol. 2, p. 777 to 778.
[26] Docket – Vol. 2, pp. 783 to 784.
[27] Docket – Vol. 2, pp. 785 to 796.
[28] Docket – Vol. 2, pp. 800 to 805.

In the Resolution[29] dated October 17, 2018, the Court granted petitioner's *Omnibus Motion*. Accordingly, the Court admitted exhibits "P-12", "P-13", "P-14", "P-18", "P-18-1", "P-19" and "P-19-1" subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to issues involved in this case.

During the hearing for the presentation of respondent's evidence on February 21, 2019, respondent's counsel manifested that respondent will not be presenting evidence in the instant case. Thus, the parties were given thirty (30) days to file their respective Memoranda.

With the filing of petitioner's *Memorandum* on March 25, 2019[30] and respondent's *Memorandum* on March 27, 2019[31], the case was submitted for decision in the Resolution dated April 1, 2019[32]. Hence, this Decision.

THE ISSUES

The parties stipulated on the following issues[33] for this Court's resolution, to wit:

"II. <u>STIPULATION OF ISSUES</u>

2.1 Whether or not the Honorable Court has jurisdiction to act on the Petition for Review;

2.2 Whether the period to assess JLL for CY 2007 has already prescribed;

2.3 Whether the BIR complied with the due process requirements under the National Internal Revenue Code ("NIRC") and its own regulations, viz;

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[29] Docket – Vol. 2, pp. 809 to 815.
[30] Docket – Vol. 2, pp. 824 to 857.
[31] Docket – Vol. 2, pp. 860 to 873.
[32] Docket – Vol. 2, p. 876.
[33] Stipulation of the Issues, JSFI, Docket – Vol. 2, p. 737.

a. Whether due notice was given by the BIR to Jones Lang Lasalle (Philippines) Inc.;

b. Whether Jones Lang Lasalle (Philippines) Inc. was given by the BIR every opportunity to be heard;

2.4 Whether the BIR can still assess JLL additional VAT, after it has already paid its deficiency tax assessments (including VAT) pursuant to BIR's regular comprehensive audit; and

2.5 Whether or not JLL is liable for deficiency VAT in the amount of ₱7,507,045.30 for the taxable year 2007."

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the instant case considering that the CTA is empowered to review the petition pursuant to its "other matters" jurisdiction.

According to petitioner, the subject deficiency VAT assessment was issued beyond the prescriptive period; that the same was plagued with procedural defects; and that respondent failed to follow the due process requirements under the NIRC.

Allegedly, the deficiency VAT assessment did not follow proper procedures laid down in Revenue Memorandum Order (RMO) No. 30-03 (On the Relief Program), RMO 28-07 (On the TRS Program), and RMO 13-12 (On the TRS and Relief Programs).

Finally, petitioner claims that based on the aforementioned arguments, it cannot be held liable for deficiency VAT in the amount of ₱7,507,045.30. To reiterate, the PAN and FAN are allegedly void for being issued beyond the three-year prescriptive period; that the same are not properly addressed to petitioner, as in fact, were not received by petitioner in the regular course of mail as these were returned to sender for the reason that addressee has already moved out. Moreover, respondent did not offer in evidence any LOA for the Special VAT Assessment, hence, the PAN and FAN are void for being issued only pursuant to a Letter Notice and that proper procedures under various BIR Relief and TRS Programs were not followed.

Respondent's counter-arguments:

Respondent counter-argues that the Honorable Court has no jurisdiction over the instant petition due to petitioner's failure to file its protest to the FAN within the period provided by law. As such, the assessment has already become final, executory and demandable; and that the said assessment is not subject to judicial scrutiny.

Further, respondent claims that petitioner is liable for deficiency VAT since the assessment was issued within the reglementary period. Allegedly after investigation pursuant to Letter of Authority No. 2009 00016964 dated May 11, 2010 and Letter Notice No. 047-TRS-00-0038 dated November 3, 2009, there has been found due from petitioner deficiency income tax and VAT for calendar year 2007. A preliminary review disclosed that petitioner failed to declare its correct sales in its Income and VAT Returns resulting in the total discrepancy of P28,725,540.40 undeclared sales as provided by third party sources.

Since the correct sales of petitioner did not appear in its VAT return, there can only be one inevitable conclusion – that there was a substantial under-declaration of sales in its VAT returns.

The discrepancy in petitioner's return manifests an evident substantial under-declaration which eloquently demonstrate the falsity or fraudulence of the VAT returns with an intent to evade the payment of tax. Thus, respondent could rightfully invoke Section 222 of the NIRC of 1997[34] because his right to assess has not prescribed.

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[34] Sec. 222. Exceptions to Period of Limitation of Assessment and Collection of Taxes.

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

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Lastly, all presumption are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. And it is incumbent upon the taxpayer to prove the contrary and failure to do so shall vest legality on respondent's actions and assessments. Thus, failure to present proof of error in the assessment will justify judicial affirmation of said assessment.

THE COURT'S RULING

We find merit in the instant Petition for Review.

The Court has jurisdiction over the present case.

Respondent argues that the Court has no jurisdiction over the instant *Petition* considering that the subject assessment has already become final, executory and demandable. Further, respondent alleges that the FNBS is not the disputed assessment contemplated by law.

We disagree.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[35] The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[36]

This Court's jurisdiction are mentioned under RA 1125, as amended by RA 9282, and the provisions pertinent to the jurisdictional issue raised by respondent in the instant case, are found in Section 7 paragraph (a) (1) thereof, read as follows:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:

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[35] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. 185666, February 4, 2015, citing *Commissioner of Internal Revenue v. Villa, et al.*, 130 Phil. 3, 4 (1968).

[36] *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019, citing *CIR V. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 146 Phil. 139, 152 (2014).

(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**;" (Emphasis supplied)

Relative thereto, Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA likewise states:

"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**;" (Emphasis supplied)

Based on the foregoing provisions, the jurisdiction of the CTA is not limited to decisions of the CIR involving disputed assessments. The second part thereof also includes **"other matters"** arising under the NIRC or other laws administered by the BIR.

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[37], the Supreme Court clarified the jurisdiction of the CTA over "**other matters**", as follows:

". . . we have previously ruled that the **appellate jurisdiction of the CTA is <u>not limited</u> to cases which involve decisions of the CIR on matters relating to**

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[37] G.R. No. 169225, November 17, 2010. ,

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> **assessments or refunds**. The second part of the provision covers **other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR)**.
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> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over 'other matters' arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an 'other matter' must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment." *(Emphasis and underscoring supplied).*

Further, in *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation*[38], the Supreme Court explained the term "**other matters arising under this Code**", as follows:

> As the CIR aptly pointed out, the phrase "other matters arising under this Code," as stated in the second paragraph of Section 4 of the NIRC, **should be understood as pertaining to those <u>matters directly related</u> to the preceding phrase "disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto"** and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers." *(Emphasis and underscoring supplied)*

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[38] G.R. No. 207843, July 15, 2015

It is clear from the foregoing jurisprudential pronouncements that the jurisdiction of the CTA to rule on "**other matters arising under the NIRC or other laws administered by the BIR",** include among others, the validity of the warrant of distraint and levy and waiver of statute of limitations. Moreover, the term **"other matters"** pertain to matters directly related to the disputed assessments or refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto.

In the instant case, petitioner questions the issuance of the FNBS and prays that the same be annulled and set aside. Considering that the subject FNBS is directly related to the subject assessment issued by respondent, and that the issuance thereof is one of the remedies for the collection of delinquent taxes sanctioned under Section 206 of the NIRC of 1997 and BIR rules and regulations, this Court is therefore clothed with jurisdiction to determine the validity of said FNBS under the phrase **"other matters arising under the NIRC or other laws administered by the BIR".**

Finally, in the case of *Commissioner of Internal Revenue v. Isabela Cultural Corporation*,[39] the Supreme Court held that the FNBS which indicates that the taxpayer was being given "this LAST OPPORTUNITY" to pay, otherwise, its properties would be subjected to distraint and levy, constitutes the CIR's final decision.

In light of the foregoing, it is evident that the issuance of the subject FNBS constitutes the final decision of respondent that is appealable before this Court.

Timeliness of the instant Petition for Review

As regards to the timeliness of the subject *Petition for Review*, Section 11 of RA No. 1125, as amended, provides that any party adversely affected by a decision or ruling of the CIR may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

In this case, considering that the subject FNBS was received by petitioner on May 8, 2017, it had thirty (30) days therefrom or

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[39] G.R. No. 135210, July 11, 2001.

until June 7, 2017, to appeal and challenge its validity with the CTA.

Clearly, the filing of the instant *Petition for Review* on May 15, 2017 was within the thirty (30) day period.

Respondent failed to prove that the PAN and the FLD/FAN were actually received by petitioner.

Petitioner denies receiving the PAN and the FAN for the subject deficiency VAT assessment. It argues that since due process was not observed in this case, the subject assessment is void. On the other hand, respondent insists that the assessment notices were validly served to petitioner at its business address.

We find for petitioner.

Section 228 of the NIRC of 1997, as amended, lays down the procedure in the issuance of tax deficiency assessment, viz:

> "**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 **pre-assessment notice shall <u>not</u> 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

(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.

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." (Emphasis supplied)

To implement the foregoing provisions, Revenue Regulation (RR) No. 12-99 was issued which specify the due process requirement to be observed in issuing deficiency tax assessments. Pertinent portions of Section 3 of RR No. 12-99 reads:

"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:

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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."

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> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — **The formal letter of demand and assessment notice <u>shall</u> be issued by the Commissioner or his duly authorized representative.** The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). **<u>The same shall be sent to the taxpayer only by registered mail or by personal delivery.</u>** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphasis and underscoring supplied)*

Based on the foregoing, if there exists sufficient basis to assess the taxpayer, the CIR or his authorized representative is mandated to issue a PAN. Thereafter, a formal letter of demand and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein. Thus, it is essential for respondent to establish and prove that the requisite assessment notices were duly served to the taxpayer within the prescriptive period.

Further, in tax assessment, due process requires that the taxpayer must actually receive the assessment. The case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[40] is instructive, 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**

[40] G.R. No. 157064, August 7, 2006.

> **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."

Applying the foregoing case, if the taxpayer denies having received the assessment notices, it is incumbent upon respondent to prove by competent evidence that the assessment notices were indeed received by the taxpayer. In this case, respondent notably failed to do so.[41] Clearly, respondent's failure to present or offer any evidence is fatal to its assertion that the PAN and FAN were validly served to petitioner.

It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[42]

Nonetheless, even if this Court takes into account the documents found in the BIR records, a perusal thereof fails to convince this Court that the PAN and FAN were actually received by petitioner.

Petitioner claims that at the time when the PAN and FAN were issued by respondent, it already transferred offices to its new address at the *"5th Floor Equitable Bank Tower, Paseo de Roxas Avenue, Makati City"*. It likewise alleges that the BIR was fully informed of the said change in address.

The provisions of Section 11 of RR No. 12-8531 are instructive and read as follows:

> "SECTION 11. *Change of Address.* - **In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal**

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[41] Order dated February 21, 20119, Docket – Vol 2, pp. 817
[42] Real vs. Belo, G.R. No. 146224, January 26, 2007.

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> **residence and/or place of business,** copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, **and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply**." (Emphasis supplied)

Based on the foregoing provision, any taxpayer intending to change his address must give a written notice to the RDO having jurisdiction over his former legal residence and/or place of business; otherwise, any communication previously sent to the said former legal residence or place of business shall be considered valid and binding for purposes of the period within which to reply.

In this case, it is clear that petitioner complied with the above-quoted provision, as shown in the following documents presented as evidence by petitioner:

1. An accomplished BIR Form No. 1905 (Application for Registration Information Update), indicating the new registered address of petitioner at *"5th Floor Equitable Bank Tower, Paseo de Roxas, Makati City."*[43]

2. *Transfer Commitment Form* executed by petitioner's Finance Controller, Maris Cristina Cariño, indicating the new address of petitioner at *"5th Flr Equitable Bank Tower, Paseo de Roxas Avenue, Makati City"*;[44]

3. Verification Slip issued by RDO No. 47, showing the date of verification on December 9, 2009 and indicating the new address of petitioner at *"5th Floor*

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[43] Exhibit "P-12", Docket – Vol. 1, p.149; admitted as Secondary Evidence in the Resolution dated October 17, 2018, Docket – Vol. 2, pp. 809 to 815.
[44] Exhibit "P-13", Docket – Vol. 1, p.150; admitted as Secondary Evidence in the Resolution dated October 17, 2018, Docket – Vol. 2, pp. 809 to 815.

Equitable Bank Tower, Paseo de Roxas Avenue, Makati City"[45]; *and*

4. Certificate of Registration No. 8RC0000020385, showing petitioner's registered address as *"5th Floor Equitable Bank Tower, Paseo de Roxas Avenue, Makati City 1229"* with the following notations: *"March 11, 2011 Changed address"* and *"NEWLY ENLISTED EFFECTIVE 01-01-2011"*[46].

The foregoing documents which were received or issued by respondent indicate that petitioner's new address is at *"5th Floor Equitable Bank Tower, Paseo de Roxas, Makati City".* It must be emphasized further that the foregoing documents presented by petitioner, were not denied nor controverted by respondent.

Interestingly, the Court notes that the <u>new address</u> of petitioner was likewise indicated in the following documents found in the BIR records:

1. *Letter* dated September 22, 2009[47] issued by petitioner and received by respondent on September 23, 2009, contesting the findings contained in the *Letter Notice*;

2. *Memorandum* dated May 14, 2010[48] issued by Elenita B. Quimosing, Head, LN Task Force to Nelson M. Aspe, Deputy Commissioner, Operations Group; and

3. *Assessment Notice* dated October 19, 2011,[49] attached to the FAN.

Evidently, respondent had knowledge of petitioner's change of address and should have sent the PAN and FAN to its new address.

However, based on the BIR records, the PAN dated October 8, 2010[50] and FAN dated October 19, 2011[51], were sent to

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[45] Exhibit "P-14", Docket – Vol. 1, p.151; admitted as Secondary Evidence in the Resolution dated October 17, 2018, Docket – Vol. 2, pp. 809 to 815.
[46] Exhibit "P-15", Docket- Vol. 1, p. 282.
[47] BIR Records, pp. 74 to 76.
[48] BIR Records, p. 78.
[49] BIR Records, p. 94.
[50] BIR Records, pp. 88 to 91.
[51] BIR Records, pp. 94 to 96.

petitioner's old address at <u>*"8F Tower 2 Enterprise Ctr., 6766 Ayala Ave., San Lorenzo, Makati City"*.</u> Consequently, the said notices were returned to sender, with a note on their respective letter envelope which read: **"RTS MOVED 1/25/11"**[52] for the PAN; and **"RTS MOVED 12/5/11"**[53] for the FAN.

While it appears that respondent did indeed issue the assessment notices, respondent failed to present evidence to refute petitioner's claim that it did not receive said assessment notices. Consequently, there was no valid service of assessment notices to petitioner.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[54] the Supreme Court ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is tantamount to denial of due process.

Further, in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*,[55] the Supreme Court held as follows:

> Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein **tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. <u>The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure</u>**.
>
> In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amounts so assessed. 'An assessment is not an action or proceeding for the

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[52] Exhibit "P-36", letter envelope attached to the PAN, BIR Records, p. 88.
[53] Exhibit "P-35", BIR Records, p. 93.
[54] G.R. No. 185371, December 8, 2010.
[55] G.R. No. 197945 & G.R. Nos. 204119-20, July 9, 2018.

> collection of taxes. x x x It is a step preliminary, but essential to warrant of distraint, if still feasible, and, also, to establish a cause for judicial action.' **The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process., which vitally includes the issuance of a valid assessment.** A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf." (Underscoring supplied)

Based on the foregoing jurisprudential pronouncements, failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is tantamount to denial of due process. Further, BIR may summarily enforce collection, only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment; and that absent a valid assessment, the Court should not afford validity and effect to the BIR's collection efforts.

Hence, when there is no valid assessment, the BIR cannot validly proceed to enforce collection process as provided by law. 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, and always with regard to the basic tenets of due process.[56]

Taking the foregoing into consideration, the Court finds that no competent evidence was presented by respondent to prove actual receipt of petitioner of the PAN and the FAN. Having failed to prove compliance therewith, respondent denied petitioner of its right to due process.

Accordingly, the deficiency VAT assessment against petitioner is null and void for having been issued in violation of the due process requirements embodied in the afore-cited Section 228 of the NIRC and RR No. 12-99. Consequently, absent a valid

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[56] *Commissioner of Internal Revenue vs Avon Products Manufacturing Inc.,* G.R. Nos. 201398-99 & G.R. Nos. 201418-19, October 3, 2018.

assessment, the issuance of the subject FNBS is likewise void and ineffectual.

With the foregoing ruling, it becomes unnecessary to address the remaining arguments raised by the parties in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency VAT assessment in the total amount of ₱7,507,045.30, for CY 2007 and the Final Notice Before Seizure, issued against petitioner, are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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