REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

JOLLIBEE WORLDWIDE PTE. LTD., Petitioner,	**CTA Case No. 9005**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** AUG 26 2020 4:26 p.m.

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DECISION

UY, *J.*:

Before this Court is an *Amended Petition for Review* filed on September 1, 2015 by petitioner Jollibee Worldwide Pte. Ltd., against respondent Commissioner of Internal Revenue, praying for the Court to declare that respondent has no legal and factual basis to assess and collect the alleged deficiency income tax, withholding tax on compensation (WTC), and expanded withholding tax (EWT) for calendar year (CY) 2009 and to order respondent to refund or issue tax credit certificate in the amount of ₱18,483,928.77, representing illegally assessed and erroneously collected income tax, EWT, and WTC for the taxable year 2009.

THE FACTS

Petitioner Jollibee Worldwide Pte. Ltd. is a multinational company organized and existing under the laws of Singapore, with license to operate in the Philippines as regional operating headquarters granted by the Securities and Exchange Commission (SEC) on November 29, 2005 with license and registration no.

FS200519494.[1] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number 243-204-387-000 with BIR Certificate Registration No. 3RC0000732181 dated January 30, 2006. Its registered address is at Jollibee Center Building, San Miguel Avenue, San Antonio, Ortigas Center, Pasig City.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of his office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.[3]

On September 22, 2011, Letter of Authority No. LOA-43A-2011-00000579 was issued by Jonas DP. Amora, OIC – Regional Director of BIR Revenue Region No. 007, Revenue District No. 43A East Pasig, authorizing Revenue Officer (RO) Lilibeth Nazario and Group Supervisor (GS) Maricar Favis to examine the petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009 pursuant to Audit Criteria for Taxable Years 2009 and 2010.[4]

Subsequently, a *Notice of Informal Conference* was issued by Revenue District Office Florante R. Aninag of BIR Revenue District No. 43A East Pasig informing petitioner of the report of investigation on all its internal revenue tax liabilities for CY 2009.[5]

On December 28, 2012, a *Preliminary Assessment Notice* (PAN)[6] was issued by OIC Regional Director Jonas DP. Amora, informing the latter of its deficiency tax liabilities including increments for the year 2009, broken down as follows:

Tax Type	Basic Amount	Interest	Total
Income Tax	5,338,828.72	2,846,400.19	8,185,228.91
Withholding Tax on Compensation	5,479,773.23	3,191,780.24	8,671,553.47
Expanded Withholding Tax	775,320.31	451,597.53	1,226,917.84

[1] Exhibit "P-1", Docket – Vol. 2, p. 931.
[2] Exhibit "P-2", Docket – Vol. 2, p. 942.
[3] *Joint Stipulation of Facts and Issues* (JSFI), Admitted Facts, par, 1, Docket – Vol. 2, p. 601.
[4] Exhibit "R-1", BIR Records, p. 1.
[5] Exhibit "R-3", BIR Records, p. 351.
[6] Common Exhibit "P-3" Docket – Vol. 2, pp. 942 to 947; "R-4", BIR Records, pp. 375 to 379.

Thereafter, petitioner received the *Formal Letter of Demand* FLD No 043A-B158-09 with Assessment Notices on January 15, 2013,[7] requesting payment of the tax liabilities including interest in the total amount of **₱18,483,928.77**, broken down as follows:

Tax Type	Basic Amount	Interest	Total
Income Tax	5,338,828.72	3,030,699.48	8,369,528.20
Withholding Tax on Compensation	5,479,773.23	3,380,945.02	8,860,718.25
Expanded Withholding Tax	775,320.31	478,362.01	1,253,682.32
TOTAL	11,593,922.26	6,890,006.51	18,483,928.77

On January 25, 2013, petitioner filed a *Reply to the PAN* stating its disagreement with the findings of the BIR in the PAN and the related deficiency tax assessment issued against petitioner covering TY 2009.[8]

On February 14, 2013, petitioner filed its *Protest Letter to the FAN*, disagreeing with the findings to the deficiency tax assessments of the BIR and requesting for reconsideration and re-investigation of the results of the BIR audit covering the taxable year 2009.[9]

On September 3, 2013, petitioner received the *Final Decision* dated August 28, 2013 issued by Regional Director Jonas DP. Amora, requesting petitioner the payment of the alleged tax deficiency in FLD/FAN No. 043A-B158-09.[10]

Thus, petitioner elevated its administrative appeal to the CIR praying for the cancellation of the deficiency tax assessment for the TY 2009 on October 3, 2013.[11]

On February 4, 2015, petitioner received a *Final Decision* dated January 23, 2015 from respondent denying its appeal against Assessment Notice No. 043A-B158-09 and ordering it to pay the deficiency taxes plus increments that have accrued thereon until the date of actual payment.[12]

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[7] Common Exhibit "P-4", Docket – Vol. 2, pp. 948 to 953; "R-5", BIR Records, pp. 380 to 385.
[8] Exhibit "P-5", Docket – Vol. 2, pp. 954 to 958.
[9] Common Exhibit "P-6", Docket – Vol. 2, pp. 959 to 969, "R-6", BIR Records, pp. 407 to 417.
[10] Common Exhibit, "P-7", Docket – 2, p. 973; BIR Records, p. 433.
[11] Exhibit "P-8", Docket – Vol. 2, pp. 977 to 988.
[12] Common Exhibit "P-9", Docket – Vol. 2, pp. 989 to 998; "R-8", BIR Records, pp. 470 to 477.

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Aggrieved, petitioner filed the instant *Petitioner for Review* on March 5, 2015.[13]

On March 18, 2015, Revenue Officer Michael R. Nitafan served a *Warrant of Distraint and/or Levy* (WDL) dated March 18, 2015 to petitioner seeking to enforce the collection of the alleged deficiency taxes amounting to ₱18,483,928.77.[14]

On March 20, 2015, petitioner filed an *Urgent Motion to Quash Warrant of Distraint and Levy*[15] praying for the quashing of the WDL and suspending the collection of petitioner's alleged deficiency income tax, WTC, and EWT for CY 2009, in the amount of ₱18,483,928.77.

Subsequently on March 23, 2015, petitioner filed a letter with the BIR requesting for the cancellation and/or withdrawal of the WDL considering that the assessments in the FAN/FLD have not yet become final and executory.[16]

On April 7, 2015, respondent filed a *Motion for Extension of Time to File Answer,* praying for an additional period of thirty (30) days from April 11, 2015, or until May 10, 2015, within which to file his Answer.[17] The same was granted by the Court on April 22, 2015, with warning that no further extension shall be allowed.[18]

On May 11, 2015[19], respondent filed his *Answer* on May 11, 2015,[20] interposing the following special and affirmative defenses: 1) that all presumptions are in favor of the correctness of the assessment; and 2) that the assessment has already become final, executory and demandable.

Thereafter, the Court in Division issued a Resolution on May 26, 2015, denying petitioner's *Urgent Motion to Quash Warrant of Distraint and Levy* for lack of merit.[21]

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[13] Docket – Vol. 1, pp. 6 to 30.
[14] Exhibit "P-10", Docket – Vol. 2, pp. 999 to 1000.
[15] Docket – Vol. 1, pp. 86 to 100.
[16] Exhibit "P-11", Docket – Vol. 3, pp. 1001 to 1002.
[17] Docket – Vol. 1, pp. 119 to 121.
[18] Resolution dated April 22, 2015, Docket – Vol. 1, p. 129.
[19] May 10, 2015 fell on a Sunday.
[20] Docket – Vol. 1, pp. 210 to 217.
[21] Docket – Vol. 1, pp. 221 to 224.

On June 15, 2015, petitioner filed a *Motion for Reconsideration (Re: Resolution dated May 26, 2015)*, praying for the reversal of the resolution dated May 26, 2015 which denied petitioner's Urgent Motion to Quash Warrant of Distraint and/or Levy. [22]

Moreover, on July 1, 2015, petitioner filed a *Motion to Reset Pre-Trial Conference* praying for the cancellation and resetting of the Pre-Trial Conference scheduled on July 21, 2015 to August 25, 2015, in view of the pendency of petitioner's motion for reconsideration to the Resolution dated May 26, 2015.[23] The Court granted petitioner's motion on July 6, 2015.[24]

On July 6, 2015, respondent filed his *Comment and Opposition On the Motion for Reconsideration).*[25]

The Court in Division denied petitioner's *Motion for Reconsideration (Re: Resolution dated May 26, 2015)* on August 13, 2015, for lack of merit.[26]

On August 24, 2015, petitioner filed a *Motion for Leave to Admit Attached Supplemental Petition for Review (with Motion to Defer Pre-Trial Conference)*[27]alleging, among others, that respondent, by way of garnishment, collected from petitioner the amount of ₱18,483,928.77 on June 4, 2015, notwithstanding that the amount was not yet delinquent and despite the pendency of the final resolution of petitioner's Urgent Motion to Quash Warrant of Distraint and Levy. Thus, on August 20, 2015, petitioner filed a letter-request to claim the refund of or issuance of tax credit certificate (TCC) for the amount of ₱18,483,928.77 representing the taxes collection from petitioner by way of garnishment.

During the hearing held on August 25, 2015, petitioner's counsel manifested that she received the Resolution dated August 13, 2015 denying petitioner's motion for reconsideration assailing the WDL. However, in view of an intervening event, the alleged garnishment of bank deposit undertaken by the BIR on June 4, 2015, the Court allowed petitioner to file an Amended Petition for Review,

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[22] Docket – Vol. 1, pp. 233 to 251.
[23] Docket – Vol. 1, pp. 254 to 257.
[24] Order dated July 6, 2015, Docket – Vol. 1, p. 258.
[25] Docket – Vol. 1, pp. 259 to 266.
[26] Resolution dated August 13, 2015, Docket – Vol. 1, pp. 268 to 274.
[27] Docket – Vol. 1, pp. 284 to 294 MD

instead of a Supplemental Petitioner for Review within a period of five (5) days, or until August 30, 2015. Respondent was also ordered to file an Answer within a period of ten (10) days from receipt of the Amended Petition for Review.[28]

On August 28, 2015, petitioner filed a *Motion for Additional Time to File Amended Petition for* Review, praying for an additional period of five (5) days from August 30, 2015 or until September 4, 2015, within which to file its Amended Petition for Review,[29] which the Court granted.[30] Thus, on September 1, 2015, petitioner filed an *Amended Petition for Review.*[31]

Respondent was directed to file his Answer within a period of ten (10) from receipt of the Resolution dated September 9, 2015.[32] On October 14, 2015, respondent filed a *Motion to Admit Supplemental Answer*[33] which was granted by the Court. Respondent's *Supplemental Answer* was admitted on October 27, 2015.[34]

In respondent's *Supplemental Answer,*[35] respondent adopted his allegations in the Answer and pointed out that petitioner has time and again actively engaged in the process which it now undermines. Allegedly, from the inception of this case to its final resolution, petitioner was afforded the right to be heard and in fact, it has exhausted all the remedies available to them. It was allegedly petitioner's failure to submit documents to support its allegations during the motion for reinvestigation that has resulted to the denial of its claims. Moreover, respondent contends that the assessment is already final, executory and demandable. Thus respondent prays that the instant Petition for Review be dismissed for lack of jurisdiction and that judgment be rendered ordering petitioner to pay the deficiency assessments plus 25% surcharge and 20% interest per annum from January 15, 2013 until fully paid.

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[28] Minutes of the hearing dated August 25, 2015 and Resolution dated September 3, 2015, Docket – Vol. 1, p. 314 and 376.
[29] Docket – Vol. 1, pp. 369 to 372.
[30] Resolution dated September 9, 2015, Docket – Vol. 1, pp. 389.
[31] Docket – Vol. 1, pp. 315 to 345.
[32] Resolution dated September 9, 2015, Docket – Vol. 1, pp. 389.
[33] Docket – Vol. 1, pp. 403 to 405.
[34] Resolution dated October 27, 2015, Docket – Vol. 1, pp. 414 to 415.
[35] Docket – Vol. 1, pp. 406 to 409.

After the Pre-Trial Conference held on February 16, 2016[36], the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on March 21, 2016.[37] The JSFI was approved in the Pre-Trial Order dated April 14, 2016 and pre-trial was terminated.[38]

Subsequently, pursuant to petitioner's *Motion to Commission An Independent Certified Public Accountant*[39] filed on March 28, 2016, the Court commissioned Katherine O. Constantino as Independent Certified Public Account (ICPA) on May 30, 2016[40].

During trial, petitioner presented three (3) witnesses, namely: Katherine O. Constantino,[41] the court-commissioned ICPA, Christian Arvin DG. Escobio[42] and Clarissa Hornilla-Guerra,[43] petitioner's Tax Manager.

Thereafter, petitioner filed its *Formal Offer of Evidence* on October 5, 2016[44] without respondent's Comment despite notice.[45] The Court admitted most of petitioner's documentary evidence, except for Exhibit "P-37" for failure of its description in the FOE to correspond with the description of the document marked; and Exhibits "P-1594 to P-1643", for not being found in the records.[46]

On March 2, 2017, petitioner filed a *Motion for Reconsideration (Re: Resolution dated February 8, 2017) (With Motion to Set Commissioner' Hearing)*[47] without respondent's comment despite due notice.[48] On December 15, 2017, the Court granted petitioner's

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[36] Minutes of the hearing dated February 16, 2016, Docket – Vol. 2, p. 583; Resolution dated February 29, 2016, Docket – Vol. 2, pp. 587 to 588.
[37] Docket – Vol. 2, pp. 601 to 613.
[38] Pre-Trial Order dated April 14, 2016, Docket - Vol. 2, pp. 656 to 665.
[39] Docket – Vol. 2, pp. 614 to 617.
[40] Minutes of the hearing dated May 30, 2016, Docket - Vol. 2, p. 674.
[41] Minutes of the hearing and Order dated July 25, 2016, Docket – Vol. 2, pp. 861 to 863; Exhibit "P-3000", Docket-Vol. 2, pp. 618 to 621; Exhibit "P-1900", Docket – Vol. 3, pp. 1089 to 1114.
[42] Minutes of the hearing and Order dated July 25, 2016, Docket – Vol. 2, pp. 861 to 863.
[43] Minutes of the hearing and Order dated August 24, 2016, Docket – Vol. 2, pp. 874 to 876; Exhibit "P-1902", Docket - Vol. 1, pp. 432 to 451' Exhibit "P-1903", Docket – Vol. 2, pp. 867 to 871.
[44] Docket – Vol. 2, pp. 897 to 930.
[45] Records Verification Report dated November 4, 2016, Docket – Vol. 3, pp. 1124.
[46] Resolution dated February 8, 2017, Docket – Vol. 3, pp. 1126 to 1128.
[47] Docket – Vol. 3, pp. 1131 to 1136.
[48] Records Verification Report dated April 26, 2017, Docket – Vol. 3, p. 1139. MO

Motion for Reconsideration (Re: Resolution dated February 8, 2017) and admitted Exhibits "P-37" and "P-1594 to P-1643". [49]

On the other hand, respondent presented one (1) witness, Revenue Officer Lilibeth M. Nazario.[50] On March 14, 2019, the Court directed respondent to file his formal offer of evidence within fifteen (15) days from March 14, or not later than March 29, 2019.[51] However, upon verification by the Court on April 5, 2019, respondent failed to file his formal offer of evidence within the given period of time.[52]

Thereafter, respondent filed a *Motion to Admit Respondent's Formal Offer of Evidence* on April 15, 2019[53] with respondent's *Formal Offer of Evidence*[54] attached thereto. Petitioner filed its *Comment/Opposition (Re: Respondent's Motion to Admit Respondent's Formal Offer of Evidence)* on May 7, 2019.[55]

On June 17, 2019, the Court granted respondent's Motion to Admit Respondent's Formal Offer of Evidence and admitted respondent's Formal Offer of Evidence. Further, the Court admitted all of respondent's documentary evidence and the parties were given thirty (30) days from receipt to file their respective memoranda. [56]

Within the extension periods granted by the Court, petitioner filed its *Memorandum* on September 18, 2019,[57] without respondent's Memorandum despite due notice.[58] Thereafter, this case was submitted for decision on September 25, 2019.[59]

Hence, this Decision.

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[49] Docket – Vol. 3, pp. 1107 to 1108.
[50] Exhibit "R-9", Docket – Vol. 3, pp. 1114 to 1119; Minutes of the hearing and Order dated March 14, 2019, Docket – Vol. 2, pp. 1167 to 1169.
[51] Minutes of the hearing and Order dated March 14, 2019, Docket – Vol. 3, pp. 1168 to 1169.
[52] Records Verification Report dated April 5, 2019, Docket – Vol. 3, p. 1170.
[53] Docket – Vol. 3, pp. 1171 to 1173.
[54] Docket – Vol. 3, pp. 1174 to 1178.
[55] Docket – Vol. 3, pp. 1181 to 1186.
[56] Docket – Vol. 3, pp. 1188 to 1190.
[57] Docket – Vol. 3, pp. 1209 to 1261.
[58] Records Verification Reports dated August 7 and 23, 2019; September 19, 2019 Docket – Vol. 3, pp. 1196 to 1197 and 1262.
[59] Resolution dated September 25, 2019, Docket – Vol. 3, p. 1264.

THE ISSUE

The parties presented the following issues for this Court's resolution, to wit:

> "Issue for the petitioner:
>
> Whether or not respondent has legal and factual bases to assess and collect from petitioner the alleged deficiency income tax, WTC, and EWT for CT 2009, in the total amount of ₱18,483,928.77, inclusive of increments.
>
> Issues for the respondent:
>
> 1. Whether the assessment of deficiency income tax, WTC, and EWT for CY 2009, in the total amount of ₱18,483,928.77, is valid, final, executory, and demandable;
>
> 2. Whether petitioner did not file a valid protest;
>
> 3. Whether the petition was filed out of time;
>
> 4. Whether petitioner did not submit supporting documents in support of its protest;
>
> 5. Whether petitioner did not submit supporting documents within 60 days in support of its protest." [60]

Petitioner's arguments:

Petitioner argues that the assessments have not become final and executory. According to petitioner, the filing of its Protest together with the pertinent supporting documents, among others, on February 14, 2013 is considered sufficient compliance with the legal requirement of Section 228 of the NIRC of 1997, as amended.

Allegedly, respondent's right to assess deficiency EWT and WTC against petitioner for CY 2009 has already prescribed in view of the lapse of the three (3)-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended.

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[60] Issues for Resolution, JSFI, Docket – Vol. 2, p. 603.

Furthermore, respondent's assessments for deficiency income tax, WTC, and EWT are not in accordance with law and regulations, in violation of petitioner's right to due process. According to petitioner, respondent's assessments for income tax, EWT, and WTC against the petitioner for CY 2009 should be cancelled and withdrawn for lack of legal and factual basis.

Lastly, petitioner claims that it is entitled to the refund of the amount of ₱18,483,928.77 representing erroneously paid or collected taxes.

Respondent's counter-arguments:

Respondent counter-argues that the assessment has already become final, executory and demandable. According to respondent, petitioner's allegation that it was not given the opportunity to respond to the PAN within the fifteen (15) day period mandated by RR No. 12-99 is erroneous. Petitioner filed a reply to the PAN on January 25, 2013, which is well-within the fifteen (15) day period because the PAN was issued on December 28, 2012.

Allegedly, petitioner was fully apprised of the facts and the law on which the FAN was issued. The FLD/FAN sent to petitioner contained in detail the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.

Moreover, petitioner failed to submit documents to support its allegations during the motion for reinvestigation that has resulted to the denial of its claims. Hence, the assessments have become final, executory, and demandable.

Finally, respondent contends that taxes collected are presumed to be in accordance with laws and regulations. Respondent claims that petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected. Hence, not refundable.

THE COURT'S RULING

For an orderly disposition of the instant case, We shall first address the issue as to whether or not petitioner was denied due process.

Respondent failed to observe due process requirements in the issuance of the FLD/FAN against petitioner

Petitioner argues that respondent's issuance of the assessments violated its right to due process of law. The FAN/FLD was not validly issued since petitioner was not given the opportunity to respond to the PAN within the full fifteen (15) day period mandated by RR No. 12-99.

On the other hand, respondent counter-argues that petitioner's allegation that it was not given the opportunity to respond to the PAN within the fifteen (15) day period mandated by RR No. 12-99 is erroneous. Petitioner filed a reply to the PAN on January 25, 2013, which is well-within the fifteen (15) day period because the PAN was issued on December 28, 2012.

We find for petitioner.

Section 3 of Revenue Regulations (RR) No. 12-99 lays down the due process requirement in the issuance of a deficiency tax assessment, the pertinent provision thereof reads 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:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that

> there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). **<u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN</u>, he shall be considered in default, 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 *(Emphasis and underscoring supplied).*

In said provision, a taxpayer has fifteen (15) days from receipt of the PAN to file a protest with the BIR. If during the said period, the taxpayer fails to file a protest to the PAN, it is only then that respondent, or his duly authorized representative, can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and assessment notice, which shall be subsequently served to the said taxpayer. In other words, respondent or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days **from the date of receipt** of the PAN before issuing the FLD and assessment notice. Such procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

Hence, it is vital at this point that the Court determine the date of actual receipt of the PAN by petitioner.

In this case, records show that the PAN was issued on December 28, 2012.[61] However, petitioner's witness, Clarissa Hornilla-Guerra, testified that petitioner received the PAN only on January 10, 2013, and that before it could respond to the PAN, it received the BIR's Final Assessment Notices (FAN) and Formal Letter of Demand (FLD) on January 15, 2013, which is only five (5) days from January 10, 2013, petitioner's alleged date of receipt of the PAN.[62]

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[61] Common Exhibit, "P-3", Docket – Vol. 2, pp. 942 to 947"; "R-4", BIR Records, pp. 377 to 379.

[62] Judicial Affidavit of Clarissa Hornilla-Guerra, Answers to Q12 and Q15, Exhibit "P-1902", Docket – Vol. 1, pp. 434 to 435.

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Thus, the burden is shifted to respondent to prove receipt of the PAN by petitioner at a date earlier than January 10, 2013 to show respondent's observance of the fifteen (15) day given to petitioner to respond to the PAN before the issuance of FAN and FLD. Notably, respondent failed to present any counter evidence to show date of actual receipt of the PAN by petitioner. Hence, the Court gives credence to the testimony of Clarissa Hornilla-Guerra that petitioner received the PAN only on January 10, 2013.

Anent the issue as to whether or not petitioner was denied due process, the Court finds in the affirmative.

In the instant case, petitioner received a copy of the PAN on January 10, 2013. Therefore, respondent should have granted petitioner a period of fifteen (15) days from said date or until January 25, 2013 to protest or respond to the PAN. As a corollary, it is only after the lapse of the said period that respondent may issue the FLD or FAN. Contrary to respondent's stand, the said 15-day period is reckoned from the date of actual receipt of the PAN by petitioner, and not the date of issuance of the PAN.

Therefore, the Court finds that the FAN and FLD were prematurely issued and received by petitioner on January 15, 2013,[63] or five days after petitioner received the PAN. Respondent, in failing to await the lapse of the fifteen (15) day period, correspondingly disregarded the mandatory due process requirement laid down under RR No. 12-99. As a consequence, petitioner was denied of its right to due process.

It is well-settled 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.[64] As a result, the assessments issued in this case are void, and all the proceedings and orders emanating from there are likewise void. As a rule, a void assessment bears no valid fruit.[65]

With the foregoing findings that petitioner was denied due process in the issuance of the FAN and FLD, and the nullity of the

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[63] Exhibit "P-4", Docket – Vol. 2, pp. 948 to 953.

[64] *Commissioner of Internal Revenue vs. Metro Star Suprema, Inc.*G.R. No. 185371, December 8, 2010.

[65] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

said FAN and FLD, it becomes unnecessary to resolve the other issues raised in this case assailing the subject assessments.

Petitioner is entitled to its refund claim in the amount of ₱18,483,928.77

Records show that after the filing of the Petition for Review in the instant case on March 5, 2015, the *WDL* dated March 18, 2015[66] was served to petitioner by respondent on even date, seeking to enforce the collection of the deficiency taxes amounting to ₱18,483,928.77, with details as follows:

Assessment / Demand No.	Date Issued	Kind of Tax	Year	Amount
043A-B158-09	1/15/2013	IT	2009	8,369,528.20
		WC	2009	8,860,718.25
		WE	2009	1,253,682.32
TOTAL				**18,483,928.77**

Moreover, during the pendency of this case, respondent proceeded to garnish petitioner's account with Metrobank, Ortigas San Miguel Ave. Branch in the amount of ₱18,483,928.77, as supported by Metrobank Application for Miscellaneous Transactions,[67] Metrobank Cashier's Check,[68] and BIR Form No. 0605[69] on June 4, 2015,

Hence, the filing of an Amended Petitioner for Review in this case by petitioner praying, among others, that respondent be ordered to refund or issue a tax credit certificate in the amount of ₱18,483,928.77 representing erroneously paid or collected taxes.

The Court finds merit in petitioner's position.

In granting the relief prayed for, the Supreme Court in the case of *The Treasurer-Assessor, et al., v. University of the Philippines,*[70]

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[66] Exhibit "P-10", Docket – Vol. 2, pp. 999 to 1000.
[67] Exhibit "P-12" and "P-12-a", Docket – Vol. 3, p. 1003 and 1008.
[68] Exhibits "P-12-b"; "P-12-c"; "P-12-d"; Docket – Vol. 3, pp. 1012 to 1017.
[69] Part of Exhibit "P-12", Docket – Vol. 3, pp. 1005 to 1007.
[70] G.R. No. L-20550, April 30, 1971

held that this Court has the power to grant relief arising from a finding of an illegal or unreasonable appealed assessment, to wit:

> "When the law vested the Court of Tax Appeals with the power to declare an assessment illegal or unreasonable, in the exercise of its appellate jurisdiction, it follows that said court is also given the power to grant the relief arising from its findings that the appealed assessment is illegal or unreasonable. The law could not have intended that after the Court of Tax Appeals had decided that a tax assessment is invalid or unreasonable, the aggrieved taxpayer would still have to go on to another court to seek the refund of the realty taxes illegally collected from him on the basis of the assessment that was declared invalid or unreasonable. To hold the view that the Court of Tax Appeals, after declaring a tax assessment invalid, cannot order the refund of the taxes illegally collected under invalid assessment, but has to order the aggrieved taxpayer to go to the regular courts to seek a refund, would be to sanction multiplicity of suits."

Further, in *Dr. Felisa L. Vda. De San Agustin vs. Commissioner of Internal Revenue*,[71] the Supreme Court also held as follows:

> "To hold that the taxpayer has now lost the right to appeal from the ruling on, the disputed assessment but must prosecute his appeal under *Section 306 (now Section 229)* of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities."

In this case, considering that petitioner's right to due process was violated by respondent, the Court has the power to grant the refund prayed for by petitioner. It follows that the amount of ₱18,483,928.77 garnished by respondent from petitioner's bank account at Metropolitan Bank and Trust Company (Metrobank) was

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[71] G.R. No. 138485, September 10, 2001.

not legally due to the government. Correspondingly, the refund of the amount ₱18,483,928.77 to petitioner by respondent is in order.

WHEREFORE, in light of the foregoing considerations, the instant *Amended Petition for Review* is hereby **GRANTED**.

Accordingly, the Final Assessment Notices, Formal Letter of Demand dated January 15, 2013 for deficiency income tax, withholding tax, and expanded withholding tax for taxable year 2009 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**. The Warrant of Distraint and/or Levy issued by respondent on March 18, 2015 is declared **NULL and VOID**.

Respondent is hereby **ORDERED** to refund or issue a tax credit certificate to petitioner the amount of ₱18,483,928.77, representing illegally assessed and erroneously collected income tax, withholding tax on compensation and expanded withholding tax for taxable year 2009.

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