**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SECOND DIVISION***

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| **SIEMENS-FIRST BALFOUR JOINT VENTURE, SIEMENS, INC., AND FIRST BALFOUR, INC.,** *Petitioners,* | **CTA Case No. 8884** |
| | Members: |
| *-versus-* | **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: JUN 08 2017 9:15 a.m. |

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**DECISION**

**MANAHAN, *J.:***

This involves an Amended Petition for Review[1] seeking the nullification of the assessment against Siemens-First Balfour Joint Venture for taxable year 2010 involving deficiency income tax and deficiency value-added tax (VAT), in the aggregate amount of Php41,891,167.64, inclusive of interest and surcharges.

**FACTS**

Petitioner First Balfour, Inc. (First Balfour) is a corporation duly organized and existing under the laws of the Republic of the Philippines, and holds a Contractor's License issued by the Philippine Contractors Accreditation Board and categorized as "AAA" for general engineering.[2]

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[1] Docket, Vol. 1, pp. 233-260.
[2] Docket, Vol. 1, Amended Petition for Review (PFR), p. 235.

Petitioner Siemens, Inc. (Siemens) is a corporation duly organized and existing under the laws of the Republic of the Philippines.[3]

Petitioner Siemens-First Balfour Joint Venture (JV) is a result of a Consortium Agreement dated June 17, 2008 entered into and between Siemens and First Balfour to undertake the design and construction of QC-Road 5 Sewage Treatment Plant and Facilities.[4]

Respondent Commissioner of Internal Revenue (CIR) heads the government agency tasked to, among others, collect all national internal revenue taxes. He also has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the 1997 National Internal Revenue Code as amended (NIRC).[5]

On June 17, 2008, Siemens and First Balfour entered into a Consortium Agreement[6] to undertake the design and construction of QC-Road 5 Sewage Treatment Plant and Facilities.[7]

A Letter of Authority (LOA) dated April 26, 2012 was issued.[8]

On January 28, 2014[9], Formal Letter of Demand No. 038-B146-10 dated January 27, 2014 was received, assessing petitioner JV for deficiency income tax and VAT for calendar year 2010, in the total amount of Php41,891,167.64. The assessments are computed as follows:

DEFICIENCY INCOME TAX

| | | |
|---|---|---|
| Taxable Income per Income Tax Return | Php | - |
| Add: Adjustments per investigation: | | |
| Additional taxable income | | 47,834,432.00 |
| Taxable Income per investigation | Php | 47,834,432.00 |

[3] Docket, Vol. 1, Amended PFR, p. 235.
[4] *Id.*
[5] *Id.*
[6] Docket, Vol. 3, Exhibit "P-2", pp. 961-971.
[7] Docket, Vol. 1, Amended PFR, p. 236.
[8] Docket, Vol. 1, Exhibit "P-47" Judicial Affidavit (JA) of Eladio S. Feraer, p. 376, in relation to Vol. 3, JA of Victoria C. Fontanilla, p. 1157.
[9] Docket, Vol. 1, PFR, p. 236, in relation to Vol. 3, JA of James L. Layaoen, p. 1190.

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|---|---|---|---|---|
| Income tax due thereon (30%) | | | Php | 14,350,329.60 |
| Less: Allowable tax credits/ payments | | | | - |
| Deficiency Income Tax | | | Php | 14,350,329.60 |
| Add: 50% surcharge | Php | 7,175,164.00 | | |
| 20% Interest p.a. (04.16.11 to 2.24.14) | | 8,217,038.04 | | 15,392,202.84 |
| TOTAL AMOUNT DUE | | | Php | 29,742,532.44 |
| | | | | |
| DEFICIENCY VAT | | | | |
| Taxable sales/revenue/receipts per VAT returns | | | Php | - |
| Add: Adjustment per investigation | | | | |
| Discrepancy on sales/revenue/receipts | | | | 47,834,432.00 |
| Taxable sales/revenue/receipts per VAT returns | | | Php | 47,834,432.00 |
| | | | | |
| Output tax due thereon (12%) | | | Php | 5,740,131.84 |
| Less: Allowable tax credits/payments | | | | - |
| Deficiency VAT | | | Php | 5,740,131.84 |
| Add: 50% surcharge | Php | 2,870,065.92 | | |
| 20% Interest p.a. (01.26.11 to 2.24.14) | | 3,538,437.44 | | 6,408,503.36 |
| TOTAL AMOUNT DUE | | | Php | 12,148,635.20 |

Petitioner JV filed a Protest[10] dated February 20, 2014.[11] Subsequently, a letter-final decision[12] dated May 9, 2014 was issued, declaring that the assessment has become final, executory and demandable.

On August 29, 2014[13], petitioners filed their Petition for Review. On September 24, 2014, petitioners filed a Motion to Suspend Collection of Tax[14], in response to the Preliminary Collection Letter[15] received on August 28, 2014, and Final Notice Before Seizure[16] received on September 11, 2014.

After hearing on the motion, the Court granted petitioners' motion to suspend collection of tax, subject to the posting of an acceptable surety bond, which petitioners complied.[17] On December 14, 2014, the Court found that petitioners' surety bond and supporting documents were in order and thus restrained the CIR and all persons acting on her behalf from undertaking any and all remedies to collect the subject deficiency taxes.[18]

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[10] Docket, Vol. 3, Exhibit "P-8", pp. 1011-1017.
[11] Docket, Vol. 1, PFR, p. 238.
[12] Docket, Vol. 3, Exhibit "P-9", p. 1018.
[13] Docket, Vol. 1, p. 6.
[14] Docket, Vol. 1, pp. 78-83.
[15] Docket, Vol. 1, p. 84.
[16] Docket, Vol. 1, p. 85.
[17] Docket, Vol. 1, Resolution dated October 1, 2014, pp. 190-191.
[18] Docket, Vol. 1, pp. 313-315.

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Meanwhile, upon motion of respondent[19], the Court directed petitioners to file an Amended Petition for Review in order to consecutively number the paragraphs therein. Thus, on November 12, 2014, petitioners filed its Amended Petition for Review[20].

Respondent filed his Answer on December 10, 2014.[21] During pre-trial, the parties submitted their Joint Stipulation of Facts and Issues (JSFI)[22] on July 9, 2015, which were approved and adopted by the Court in its Pre-Trial Order[23] dated August 5, 2015.

The case proceeded to trial. Petitioners presented the following witnesses: (1) Mr. Eladio S. Feraer[24] – Treasurer of First Balfour; (2) Ms. Clarisa G. Timog[25] – Senior Accountant Manager of First Balfour; (3) Mr. Alberto A. Ignacio, Jr.[26] – Vice President – Operation of First Balfour; and (4) Ms. Jean Irene M. Janobas[27] – Controller at Siemens, Inc.

On February 1, 2016, petitioners filed their Formal Offer of Evidence[28] (FOE). Despite the opportunity given, respondent failed to file his comment.[29] On April 14, 2016, the Court resolved petitioners' FOE, resulting to the admission and denial of certain documents.[30]

Respondent, on the other hand, presented three (3) witnesses: (1) Ms. Mercurie C. Tokgan[31] – former group supervisor and revenue officer; (2) Ms. Victoria C. Fontanilla[32] – revenue officer; and (3) Mr. James L. Layaoen[33] – revenue officer.

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[19] Docket, Vol. 1, pp. 198-200.
[20] Docket, Vol. 1, pp. 233-255.
[21] Docket, Vol. 1, pp. 305-311.
[22] Docket, Vol. 2, pp. 621-629.
[23] Docket, Vol. 2, pp. 637-643.
[24] Docket, Vol. 1, Exhibit "P-47" Judicial Affidavit, pp. 358-383; Vol. 2, Exhibit "P-48" Amended Supplemental Judicial Affidavit, pp. 734-748.
[25] Docket, Vol. 1, Exhibit "P-49" Judicial Affidavit, pp. 447-458; Vol. 2, Exhibit "P-51" Supplemental Judicial Affidavit, pp. 823-836.
[26] Docket, Vol. 1, Judicial Affidavit, pp. 500-508.
[27] Docket, Vol. 2, Exhibit "P-52" Judicial Affidavit, pp. 547-559.
[28] Docket, Vol. 3, pp. 931-957.
[29] Docket, Vol. 3, Records Verification dated March 4, 2016, p. 1132.
[30] Docket, Vol. 3, pp. 1134-1135.
[31] Docket, Vol. 3, Judicial Affidavit, pp. 1140-1144, with unsigned attestation.
[32] Docket, Vol. 3, Judicial Affidavit, pp. 1156-1161.
[33] Docket, Vol. 3, Judicial Affidavit, pp. 1189-1194.

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Respondent was granted until November 3, 2016[34] to file his FOE, but failed to do so timely[35]. Thus, the Court gave the parties thirty (30) days from receipt of notice within which to submit their respective memoranda.[36]

After extensions granted[37], petitioners filed their Memorandum[38] on February 1, 2017. As of February 6, 2017, Records Verification showed that respondent failed to file his memorandum.[39]

Considering the foregoing, the Court considered the case submitted for decision on February 9, 2017.[40]

On March 7, 2017, after the case was submitted for decision, respondent filed his Compliance[41] submitting the BIR Record, and his Motion to Admit Formal Offer of Exhibits[42] (FOE) with attached FOE[43]. Petitioners opposed the admission of respondent's FOE.[44] On April 10, 2017, the Court denied respondent's motion to admit FOE.[45]

Hence, this decision.

## ISSUES[46]

The parties submit the following issues for resolution:

1. Whether the Formal Letter of Demand having been issued without a Preliminary Assessment Notice is valid;

2. Whether the assessment subject of the Final Decision has prescribed;

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[34] Docket, Vol. 3, Order dated October 24, 2016, p. 1223.
[35] Docket, Vol. 3, Records Verification dated November 21, 2016, p. 1224.
[36] Docket, Vol. 3, Resolution dated November 25, 2016, p. 1226.
[37] Docket, Vol. 3, Orders dated January 5, 2017 and January 19, 2017, pp. 1231 and 1236, respectively.
[38] Docket, Vol. 3, pp. 1238-1301.
[39] Docket, Vol. 3, Records Verification dated February 6, 2017, p. 1302.
[40] Docket, Vol. 3, Resolution dated February 9, 2017, p. 1303.
[41] Docket, Vol. 4, pp. 1315-1316.
[42] Docket, Vol. 4, pp. 1317-1321.
[43] Docket, Vol. 4, pp. 1322-1330.
[44] Docket, Vol. 4, Opposition/Comment, pp. 1334-1338.
[45] Docket, Vol. 4, p. 1366.
[46] Docket, Vol. 2, JSFI, pp. 623-624

3. Whether petitioner Siemens-First Balfour Joint Venture has undeclared income arising from its transactions with Manila Water;

4. Whether petitioner JV is liable for deficiency income tax for taxable year 2010; and

5. Whether petitioner JV is liable for deficiency VAT for taxable year 2010.

**Petitioners' Arguments**[47]

Petitioners argue that the FAN is void since no Preliminary Assessment Notice (PAN) was received; and that the situation of petitioner JV is not one of the exceptions wherein a PAN is not required. Petitioners also state that they were not furnished an original copy of the Final Decision dated May 9, 2014. They were only able to secure a photocopy of such Final Decision on August 1, 2014.

Petitioners also argue that the subject assessments for deficiency VAT and income tax for taxable year 2010 have prescribed since: (1) no PAN was issued; (2) the FAN was issued only on January 27, 2014 or beyond the three-year prescriptive period; and (3) the ten-year prescriptive period for assessment does not apply.

As to the items and basis of the assessments, petitioners argue that a joint venture formed for undertaking construction projects is exempt from income tax under Presidential Decree No. (PD) 929 and Section 22(B)[48] of the NIRC.

Petitioners further argue that the alleged expenses paid out by the suppliers as found in respondent's computerized matching does not necessarily result to income for petitioner JV; that petitioner JV did not earn any income since the project for which the JV was formed was not pursued; that no

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[47] Docket, Vol. 1, Amended Petition for Review, pp. 239-253; docket, Vol. 3, Memorandum, pp.1244-1299.

[48] Sec. 22. Definitions. – When used in this Title:

(B) The term 'corporation' shall include partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations, or insurance companies, but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the government. xxx

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transactions with petitioner JV were undertaken so as to give rise to a VAT liability on the part of petitioner JV; that any applicable taxes on the expenses reported by the suppliers have already been paid by petitioner Siemens, such that assessing petitioner JV for the same taxes would be double taxation.

**Respondent's Counter-Arguments**[49]

Respondent argues that if petitioners' allegation that it was furnished only a photocopy of the Final Decision dated May 9, 2014 was true, then said Final Decision has yet to be validly served. As such, the instant petition for review was prematurely filed.

Respondent also argues that the assessments involve 100% under-declaration, thus the tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission.

As to the assessments, respondent argues that the additional income tax arose from computerized matching conducted on the information provided by withholding agents/payors and payees/income recipients against purchases declared in the income tax return (ITR)/financial statements (FS) of petitioner. The discrepancy is considered as undeclared sales which was assessed the corresponding income tax and VAT.

## RULING OF THE COURT

The petition has merit.

**The Court has jurisdiction over the petition for review.**

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments.[50] Said appeal may be availed

[49] Docket, Vol. 1, Answer, pp. 305-311.
[50] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:

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of by filing a petition for review with the CTA within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the CIR to act on the disputed assessments.[51]

As stipulated by the parties, petitioner JV received the Final Decision dated May 9, 2014[52], however, there was no stipulation as to the date of receipt of such Final Decision.

Respondent's witness, Mr. James L. Layaoen, testified that a Letter denying the protest was issued and served to petitioner through registered mail on May 9, 2014, as follows:

> (10) Q. What happened after receipt of the Protest Letter of Petitioner was received (*sic*) by the Bureau of Internal Revenue, if any?
>
> A. Based on the BIR docket, <u>a Letter denying the protest was issued and served to Petitioner through registered mail on May 9, 2014</u>.
>
> (11) Q. I am showing you a Letter dated May 9, 2014 with an attached registry receipt bearing number 5493 found on page 151 of the BIR docket and pre-marked as Exhibit "R-17", what relation does this document have with the Letter you just mentioned?
>
> A. That is the exact document I was referring to.
>
> (12) Q. After the issuance of the aforementioned letter, what happened next, if any?
>
> A. Based on the BIR docket, the delinquent account of Petitioner was deemed unprotested as evidenced by the Monthly Summary of taxes assessed-unprotested of the Assessment Division.[53] (Underscoring supplied)

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1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, xxx.

[51] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx

[52] Docket, Vol. 2, JSFI, p. 621.

[53] Docket, Vol. 3, Judicial Affidavit, p. 1191.

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Thus, from the foregoing, it is clear that the Final Decision was issued by the BIR on May 9, 2014. This also contradicts the CIR's argument that the instant petition for review is prematurely filed because the Final Decision has yet to be validly served on petitioner JV.[54]

The issue remains as to when the said Final Decision was received in order to determine the 30-day period within which petitioners should file the appeal before the Court.

As to receipt of said Final Decision, petitioners' witness testified:

> 49. Q: What was the action taken by Respondent on the Protest dated February 20, 2014 filed by the Joint Venture?
>
> A: <u>Respondent denied the Protest filed by the Joint Venture and issued a Final Decision dated May 09, 2014</u> declaring final and executory the deficiency tax assessment for income tax and VAT against the Joint Venture as per Formal Letter of Demand No. 038-B146-10 issued on January 27, 2014.
>
> 50. Q: if the Final Decision dated May 09, 2014 will be shown to you, would you be able to identify the same?
>
> A: Yes, sir.
>
> 51. Q: I am showing to you Final Decision dated May 09, 2014, please go over this document and tell us what is the relation of this document to the document you mentioned earlier?
>
> A: This is the Final Decision dated May 09, 2014 that I mentioned earlier.
>
> Xxx
>
> 52. Q: When did the Joint Venture receive a copy of the Final Decision dated May 09, 2014 of the respondent?

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[54] Docket, Vol. 1, Answer, p. 310.

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A: The Joint Venture received a copy of the Final Decision dated May 09, 2014 only on August 01, 2014.

53. Q: I noticed that this Final Decision dated May 09, 2014 is a mere photocopy of the original, could you please explain to us why the Joint Venture received only a copy thereof?

A: Because Respondent did not furnish the Joint Venture with an official and/or original copy of the Final Decision dated May 09, 2014.

54. Q: Please tell us then, how did the Joint Venture find out about the Final Decision?

A: BIR informed our liaison officer that there is already a final decision while following up the assessment after our protest letter.

55. Q: What efforts, if any did you or the Joint Venture do to obtain an official copy of the Final Decision?

A: I asked our Accounting Staff and our Liaison officer to go to the BIR Region 7 office to obtain an official copy of the Final Decision, but they were not able to obtain a copy because the BIR will not issue the original.

56. Q: After receipt of the Final Decision dated May 09, 2014 on August 01, 2014, what happened next, if any?

A: On August 29, 2014 or within thirty (30) days from receipt on August 1, 2014, the Joint Venture together with First Balfour and Siemens, the Petitioners herein, filed the instant Petition seeking to declare void the assessments for deficiency income tax and VAT in the total amount of ₱41,891,167.64 against the Joint Venture for taxable year 2010, as reflected in the FLD and Final Decision dated May 09, 2014.[55] (Underscoring supplied)

On the other hand, respondent's witness merely testified that the Final Decision was sent by registered mail. Respondent

[55] Docket, Vol. 1, Exhibit "P-47" Judicial Affidavit of Eladio S. Feraer, pp. 369-370.

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did not offer evidence which shows petitioner JV's receipt of said Final Decision on a date other than August 1, 2014.

Considering the foregoing, the Court finds that petitioner JV received the Final Decision on August 1, 2014. Counting thirty (30) days[56] therefrom, petitioners had until August 31, 2014 within which to file the petition for review. Thus, petitioners' Petition for Review was timely filed on August 29, 2014 and the Court acquires jurisdiction.

**The assessments are void for failure to comply with due process; and have not become final, executory, and demandable.**

The due process requirements in the issuance of a deficiency tax assessment are specifically enumerated. Thus, Section 228 of the NIRC, 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: ...
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by the 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.
>
> xxx xxx xxx

[56] RRCTA, Rule 8, Section 3(a).

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Corollary thereto, Section 3 of Revenue Regulations No. (RR) 12-99[57], as amended by RR 18-2013[58], provides:

> 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 xxx.
>
> 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.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the finding 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.
>
> xxx xxx xxx
>
> 3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized

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[57] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[58] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

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> representative. The FLD/FAN 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 assessment shall be void.
>
> xxx xxx xxx (Underscoring supplied)

Under the law and the rules, the CIR or duly authorized representative is required to issue a PAN against the taxpayer whenever there is a finding of any deficiency tax due. The taxpayer shall be required to respond to the PAN within fifteen (15) days from receipt thereof. The taxpayer's failure to respond within the period prescribed results to the taxpayer being considered in default, and shall lead to the issuance of the FLD/FAN.

The mandatory nature of the issuance of the PAN and compliance with the due process requirements has been settled in Commissioner of Internal Revenue v. Metro Star Superama, Inc.[59], where the Supreme Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must first be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement...
>
> xxx xxx xxx
>
> ...it is clear that the sending of a PAN to [the] 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. <u>The use of the word "shall" in subsection 3.1.2 [now, 3.1.1] 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</u>

[59] G.R. No. 185371, December 8, 2010, recently cited in Dionisia D. Pacquiao v. Hon. Thelma S. Milabao OIC, Regional Director Bureau of Internal Revenue Region No. 18, CTA Case No. 9039, May 30, 2017; Commissioner of Internal Revenue v. Merial Philippines, Inc., CTA EB No. 1398, May 9, 2017.

laid down by law and its own rules is a denial of Metro Star's right to due process... (Underscoring supplied)

In the instant case, petitioners' witness testified that they did not receive any PAN prior to the FLD, to wit:

> 83. Q: In relation to the correspondences received by the Joint Venture thru First Balfour from Respondent with respect to taxes concerning the Joint Venture, what was the first document received by the latter from Respondent, if any?
>
> A: Based on our records, the first document received by the Joint Venture from the BIR were(*sic*) the Letter of Authority dated April 26, 2012 ("LOA") received on May 10, 2012 and then, the FLD on January 28, 2014.
>
> 84. Q: Based on your experience as an accountant, what document should have preceded the issuance of an FLD?
>
> A: Based on my experience and understanding as an accountant, Respondent should have first issued a Preliminary Assessment Notice (PAN) prior to the issuance of FLD.
>
> 85. Q: Do you have any basis for that statement?
>
> A: Yes, as advised by our counsels, Section 228 of the Tax Code and BIR Revenue Regulation No. 18-2013, amending BIR Revenue Regulation No. 12-99, require that a taxpayer must first be informed that he is liable for deficiency taxes through the issuance of [a] Preliminary Assessment Notice or PAN.
>
> 86. Q: In this case, how was the Joint Venture informed or notified of the deficiency income tax and VAT for taxable year 2010?
>
> A: The Joint Venture was improperly and/or inappropriately informed of its alleged deficiency income tax and VAT for taxable year 2010.
>
> 87. Q: Could you please explain to us why?
>
> A: This is because the Joint Venture did not receive any copy of a PAN from the BIR pertinent to its alleged deficiency income tax and VAT for taxable year 2010.

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> 88. Q: How did the Joint Venture came (*sic*) to know of such deficiency assessments?
>
> A: The Joint Venture only came to know for the first time of its alleged assessments for deficiency for income tax and VAT for taxable year 2010 upon its receipt on January 28, 2014 of a copy of the FLD issued by Respondent on January 27, 2014.
>
> 89. Q: What is the effect or significance of this failure of Respondent to serve a copy of a PAN to the Joint Venture?
>
> A: This makes the assessments for deficiency income tax and VAT against the Joint Venture for taxable year 2010 void.
>
> 90. Q: Could you please explain to us why do [you] say that the assessments will be declared void?
>
> A: As advised by our lawyers, the issuance of a PAN is mandatory and is not a mere procedural defect, the absence of which affects the right of the taxpayer, the Joint Venture in this case, to due process. Without a PAN issued to the Joint Venture prior [there]to[,] [the] issuance of the FLD and Final Decision dated May 09, 2014 violated Section 228 of the Tax Code and Revenue Regulation No. 18-2013 expressly conferring upon the taxpayer the right to be informed in writing of the law and the facts on which the assessments are made thru a PAN.[60] (Underscoring supplied)

Considering the testimony that petitioner JV did not receive any PAN prior to its receipt of the FLD, respondent should have proved that said PAN was duly mailed and actually received by petitioner JV.

Under the Rules of Court, it is presumed that "a letter duly directed and mailed is received in the regular course of the mail."[61] However, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.[62] Unfortunately, respondent was

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[60] Docket, Vol. 1, Exhibit "P-47" Judicial Affidavit of Eladio S. Feraer, pp. 376-377.
[61] Rules of Court, Rule 131, Section 3(v).
[62] Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc., G.R. No. 202695, February 29, 2016; Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010; Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue, G.R. No. 157064, August 7, 2006.

unable to prove that the mailed PAN was received by petitioner JV. Respondent's witness testified:

> (17) Q. I am showing you a Preliminary Assessment Notice with Details of Discrepancies found on page 87 and 86 of the BIR docket and pre-marked as Exhibit "R-2" and Exhibit "R-3", respectively, what relation does these documents have with the Preliminary Assessment Notice with Details of Discrepancy you just mentioned?
>
> A. Those are the exact documents I was referring to.
>
> (18) Q. Attached to the Preliminary Assessment Notice is a Registry Receipt bearing no. 71, what relation does this document have with the one you mentioned earlier?
>
> A. That is the proof of service of the Preliminary Assessment with Details of Discrepancies.
>
> (19) Q. After the issuance of the Preliminary Assessment Notice, what happened, if any?
>
> A. A Final Assessment Notices (*sic*) dated January 27, 2014 with Formal Letters of Demand dated January 27, 2014 and Details of Discrepancies were issued subsequently and served on January 28, 2014 and duly received by Supervisor Pio N. Nasuli.[63]

It is notable that respondent's witness did not testify as to the petitioner's receipt of the PAN (Q&A No. 18), compared to her positive testimony as to the receipt of the FAN/FLD (Q&A No. 19). Even on cross-examination and from the questioning of this Court, it is shown that respondent did not make efforts to determine and ensure that the PAN had actually been received by petitioner JV before issuing the FAN/FLD, as shown below:

> ATTY. CAJALNE:
> Q. You mentioned also of Preliminary Assessment Notice, is that correct?
>
> MS. FONTANILLA:
> A. Yes.
>
> ATTY. CAJALNE:

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[63] Docket, Vol. 3, Judicial Affidavit of Victoria C. Fontanilla, p. 1159.

Q. I noticed that the Preliminary Assessment Notice marked as Exhibit R-2 dated January 9, 2014, how was the Siemens-Balfour Joint Venture notified of this Preliminary Assessment Notice?

MS. FONTANILLA:
A. Thru registered mail at the given address.

ATTY. CAJALNE:
Q. I noticed that there is no return, you did not identify of any return of the Preliminary Assessment Notice sent to Siemens-Balfour Joint Venture, is that receipt?

MS. FONTANILLA:
A. There's a registry receipt.

ATTY. CAJALNE:
Q. Only the registry return receipt?

ATTY. MEDINA:
Your Honors please, may we intervene, Your Honors? What is being pointed out is registry receipt, Your Honors, not registry return receipt.

ATTY. CAJALNE:
Correct, Your Honors.

JUSTICE CASTAÑEDA:
Do you have any participation in the sending of the ...what is the extent of your participation?

MS. FONTANILLA:
A. I mailed it thru registered mail.

JUSTICE CASTAÑEDA:
How about the registry receipt?

MS. FONTANILLA:
A. We didn't receive any.

JUSTICE MANALASTAS:
But you were the one who mailed it?

MS. FONTANILLA:
A. Yes, Your Honor.

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ATTY. CAJALNE:
Q. You mean, you cannot tell when Siemens-First Balfour received this Preliminary Assessment Notice, from this document?

JUSTICE MANALASTAS:
Do you know if this was received by the addressee?

MS. FONTANILLA:
A. No, Your Honor.

JUSTICE CASTAÑEDA:
Was there a protest filed against that Preliminary Assessment Notice?

MS. FONTANILLA:
A. None, your Honor.[64]

From the foregoing, the Court finds that respondent failed to prove that petitioner JV received the PAN. As established above, the sending and receipt of the PAN is mandatory and is a substantive, not merely a formal, requirement.[65] Thus, for respondent's failure to prove the sending and receipt of the PAN, the assessment made by the CIR is void.[66]

Considering the foregoing, the Court finds no reason to discuss the remaining issues, for it is well-settled that a void assessment bears no fruit.[67]

**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand No. 038-B146-10 dated January 27, 2014 and its attendant Final Assessment Notices, demanding the payment of deficiency income tax of Php29,742,532.44 and deficiency VAT of Php12,148,635.20 for taxable year 2010 are hereby **CANCELLED** and **WITHDRAWN**.

Furthermore, the Preliminary Collection Letter dated August 15, 2014; Final Notice Before Seizure dated September

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[64] Transcript of Stenographic Notes (TSN), Hearing on July 13, 2016, pp. 18-20.
[65] Commissioner of Internal Revenue v. Metro Star Superama, Inc., see Note 59.
[66] *Id.*
[67] Commissioner of Internal Revenue v. Metro Star Superama, Inc., see Note 59, citing Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. Nos. 159694 & 163581, January 27, 2006.

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1, 2014; and Warrant of Distraint and/or Levy dated September 29, 2014 are likewise cancelled and withdrawn.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**CAESAR A. CASANOVA**
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.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson

## 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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice