REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

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KENNETH C. PUNDANERA, Petitioner,	**CTA CASE NO. 8333**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 2 0 2015 4:18 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's "Motion Reconsideration (Re: Decision dated December 02, 2014)" filed on December 18, 2014, with petitioner's "Comment/Opposition (To: Motion for Reconsideration dated 17 December 2014)" filed on January 9, 2015.

Respondent asks for the reconsideration of this Court's Decision (Assailed Decision) dated December 2, 2014, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, this instant Petition for Review is **GRANTED**. Accordingly, the subject Preliminary Assessment Notice dated December 21, 2009, Formal Letter of Demand No. 34-2006 dated 14 January 2010 and Assessment Notices No. 34-2006 for Income, VAT, EWT, all dated January 14, 2010 are declared **NULL and VOID**, and the Warrant of Distraint and/or Levy for the amount of Twenty Four Million Nine Hundred Seventy Six Thousand One

Hundred Seventy Nine and 17/100 (Php24,976,179.17) is **CANCELLED and deemed WITHDRAWN.**

SO ORDERED."

Respondent contends that the Preliminary Assessment Notice (PAN) dated December 21, 2009, the Assessment Notice No. 34-2006 and the Formal Letter of Demand (FLD) No. 34-2006, both dated January 14, 2010, and the Warrant of Distraint and/or Levy dated August 25, 2011 were validly issued against petitioner. Respondent insists that since the PAN, the Assessment Notice, and the FLD were properly addressed to petitioner and sent by registered mail, it is presumed that the same were received in the regular course of mail. Respondent, likewise, points out that one of petitioner's witnesses testified that petitioner continues to receive all the notices and correspondences sent to him through the Unioil Paco Station. Respondent also believes that the "shifting of burden" principle enunciated in the case of *Metro Star Superama, Inc.* does not apply in the instant case since petitioner's non-receipt of the PAN, the Assessment Notice, and the FLD was due to his failure to notify respondent of his new business address.

Respondent further argues that, granting for the sake of argument, that it was only on April 8, 2011 that petitioner learned of the subject assessment when he received the 1st Notice from the BIR demanding payment for deficiency taxes for taxable year 2006, petitioner has until May 8, 2011 to file his protest thereto. However, it was only on May 13, 2011 that petitioner requested for the withdrawal and/or re-evaluation of the assessment, thus, his protest was already belatedly filed.

On the other hand, petitioner opposes the said motion on the ground that the burden of proving actual receipt of the PAN and the FLD is with respondent. Petitioner disagrees with respondent's argument that the protest was filed beyond the reglementary period. Petitioner asserts that only when his counsel, Atty. Marianne Palisoc, conferred with Revenue Officer Maricol Domingo, that they discovered that a PAN was issued against him.

Upon careful evaluation of the arguments raised by respondent, the Court finds that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

The records of the case do not provide evidence of petitioner's receipt of the PAN, the FLD, and the Assessment Notice. Respondent falls short of the requirement to adduce competent evidence to establish petitioner's actual receipt of said notices which rendered the subject assessment notices invalid and without force and effect. It is of no importance whether petitioner's protest was timely filed or not, "for it is well-settled that a void assessment bears no fruit"[1]. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[2]

WHEREFORE, premises considered, respondent's "Motion Reconsideration (Re: Decision dated December 02, 2014)" is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[1] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[2] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.