REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

STAR SPORTS CORPORATION,	**CTA CASE NO. 10380**
Petitioner,	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, AND ASSISTANT REGIONAL DIRECTOR OF REVENUE REGION NO. 8, MAKATI CITY,	Promulgated:
Respondents.	NOV 0 6 2023

x ---------- x

9:12 a.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a **Petition for Review,**[1] filed on 21 October 2020 by petitioner **Star Sports Corporation** against respondents **Commissioner of Internal Revenue** ("**CIR**") and the **Assistant Regional Director of Revenue Region No. 8, Makati City**, praying that the Court (a) cancel respondent CIR's deficiency internal revenue assessment amounting to Ten Million Eight Hundred Sixty-Five Thousand Four Hundred Ninety-Seven and 37/100 Pesos (Php 10,865,497.37) for calendar year ("CY") 2014; and (b) declare the Warrant of Distraint and/or Levy ("WDL"), issued by respondent Assistant Regional Director in relation to Letter of Authority ("LOA") No. eLA201100079863, null and void.[2]

The Parties

Petitioner Star Sports Corporation is a domestic corporation duly organized and registered under Philippine law with registered address at the Ground Floor of Alabang Town Center, Muntinlupa City.[3]

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1 Records, pp. 8-23.
2 *See* Petition for Review, p. 15, *id.*, p. 22.
3 *See* Joint Stipulation of Facts and Issues, pp. 1-2, *id.*, pp. 233-234; *see also* Pre-Trial Order, p. 2, *id.*, p. 266.

Respondent CIR is the head of the Bureau of Internal Revenue ("BIR"). He has the powers and duties to perform the assessment and collection of taxes, fees, and charges, and to enforce all forfeitures, penalties, and fines connected therewith.[4]

Finally, respondent Assistant Regional Director of Revenue Region No. 8, Makati City, is the duly authorized representative of respondent CIR who issued the assailed WDL.[5]

The Facts

On 4 August 2015, BIR Regional Region No. 8, Makati City, issued LOA No. eLA201100079863, authorizing Cynthia Velasco and Lorna Villanueva to audit petitioner for all internal revenue taxes for CY 2014.[6] Petitioner also allegedly received a First Notice on even date, with which it complied by sending the information required by the LOA through letters dated 27 August 2015 and 2 February 2016.[7]

Petitioner then received Preliminary Findings sent by Joan Claudette C. Aguilar via email on 10 May 2016.[8] It responded by filing an Explanation Letter with the BIR on 27 May 2016 and by submitting additional documents on 27 June 2016 and 1 July 2016.[9]

Afterwards, the BIR issued *Subpoena Duces Tecum* No. 000445 on 13 December 2016, with which petitioner complied via a transmittal letter received by the BIR on 13 January 2017.[10]

In relation to the assessment, the BIR then allegedly issued a Preliminary Assessment Notice ("PAN") on 6 December 2017 and a Final Assessment Notice ("FAN") on 9 January 2018.[11] Petitioner denies receipt of either Assessment Notice.[12]

Later, on 9 September 2020, petitioner received an Advisory on Receipt of Notice of Garnishment, dated 4 September 2020, informing it that Metrobank had put its corporate account on hold, pursuant to notice of

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4 *See* Joint Stipulation of Facts and Issues, p. 2, *id.*, p. 234; *see also* Pre-Trial Order, p. 2, *id.*, p. 267.
5 *Ibid.*
6 *See* Joint Stipulation of Facts and Issues, p. 2, *id.*, p. 234; *see also* Pre-Trial Order, p. 3, *id.*, p. 268.
7 *See* Paragraph 8, Petition for Review, p. 3, *id.*, p. 10.
8 *See* Paragraph 9, Petition for Review, p. 3, *id.*, p. 10.
9 *See* Paragraph 10, Petition for Review, p. 3, *id.*, p. 10.
10 *See* Paragraph 11, Petition for Review, p. 3, *id.*, p. 10; *see also Subpoena Duces Tecum*, dated 13 December 2016, *id.*, p. 166.
11 *See* Paragraph 7, Answer, p. 2, *id.*, p. 194.
12 *See* Paragraph 5, Memorandum, p. 2, *id.*, p. 450.

garnishment from the BIR.[13] Petition then secured a copy of the assailed WDL on 28 September 2020.[14]

Aggrieved, petitioner filed the instant Petition for Review on 21 October 2020. Respondent CIR eventually filed his Answer[15] via registered mail on 19 March 2021.

After both parties filed their respective Pre-Trial Briefs, via registered mail on 6 September 2021 for respondent[16] and via private courier on 30 September 2021 for petitioner,[17] the Pre-Trial Conference was held on 7 October 2021.[18] The parties then filed their Joint Stipulation of Facts and Issues[19] on 26 October 2021, and the Court issued a Pre-Trial Order[20] on 3 January 2022.

Petitioner presented its sole witness, Ms. Russel M. Membrebe, during the hearing held on 26 April 2022. Ms. Membrebe identified the documentary exhibits mentioned in her Judicial Affidavit.[21] This was followed by petitioner's submission of its Formal Offer of Evidence[22] on 5 May 2022 and respondent's submission of his Comment[23] to the same via registered mail on 25 May 2022. The Court admitted all of petitioner's offered exhibits.[24]

On 20 October 2022, respondents presented their witnesses, Revenue Officers ("RO") Joan Claudette Aguilar and Fritz Jihann P. Manabilang, who testified on direct examination by way of their respective Judicial Affidavits.[25] Respondents then filed their Formal Offer of Exhibits[26] via registered mail on 4 November 2022, while petitioner filed its Comment and Opposition[27] thereto on 11 November 2022. Despite initially denying Exhibit "R-5", the Court eventually admitted all of respondents' offered exhibits.[28]

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13 *See* Paragraph 12, Petition for Review, p. 3, *id.*, p. 10; *see also* Advisory on Receipt of Notice of Garnishment, *id.*, p. 168.
14 *See* Paragraph 13, Petition for Review, p. 3, *id.*, p. 10.
15 *Id.*, pp. 193-197.
16 *Id.*, pp. 226-230.
17 *Id.*, pp. 208-220.
18 *See* Minutes of the Hearing held on 7 October 2021, *id.*, p. 225.
19 *Id.*, pp. 233-244.
20 *Id.*, pp 266-274.
21 *See* Minutes of the Hearing held on 26 April 2022, *id.*, p. 307.
22 *Id.*, pp. 310-320.
23 *Id.*, pp. 350-352.
24 *See* Resolution, dated 8 July 2022, p. 1, *id.*, p. 358.
25 *See* Minutes of the Hearing held on 20 October 2022, *id.*, p. 380.
26 *Id.*, pp. 388-394.
27 *Id.*, pp. 395-402.
28 *See* Resolution, dated 16 January 2023, p. 1, *id.*, p. 406; *see also* Resolution, dated 16 May 2023, p. 1, *id.*, p. 434.

Respondents then filed their Memorandum[29] on 3 July 2023 while petitioner filed its own Memorandum[30] on 6 July 2023, prompting the Court to submit this case for decision on 25 July 2023.[31]

Hence, this Decision.

The Issues[32]

1) Whether or not the deficiency internal revenue tax assessment issued by respondent CIR against petitioner for taxable year 2014 is valid; and
2) Whether or not the assailed WDL issued by respondent Assistant Regional Director is valid.

Arguments of the Parties

Petitioner's Arguments

In its Memorandum, petitioner argues that the assessment is null and void due to (a) respondent CIR's failure to inform it of the factual and legal basis of the assessment, violating its right to due process, as it allegedly never received the PAN or FAN;[33] and (b) RO Aguilar's lack of authority to examine petitioner's accounting records, given that she was not named in LOA No. eLA201100079863.[34] Considering that the assessment is null and void, petitioner further argues, the WDL issued pursuant to said assessment is similarly invalid and without any effect.[35]

Respondent's Arguments

For his part, respondent CIR insists that the instant Petition for Review should be dismissed as the subject assessment has already attainted finality due to petitioner's failure to file an administrative protest to the same.[36] He also contends that petitioner failed to prove that the assessment is invalid as its alleged non-receipt of the PAN and FAN is based solely on the testimony of witness Ms. Membrebe, who, respondent claims, has no personal knowledge of the circumstances surrounding said alleged non-receipt.[37]

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29 *Id.*, 437-448.
30 *Id.*, 449-463.
31 *See* Resolution, dated 25 July 2023, p. 1, *id.*, p. 465.
32 *See* Issues, Pre-Trial Order, p. 3, *id.*, p. 268.
33 *See* Memorandum for petitioner, pp. 1-8, *id.*, pp. 449-456.
34 *See* Memorandum for petitioner, pp. 8-10, *id.*, pp 456-458.
35 *See* Memorandum for petitioner, pp. 11-12, *id.*, pp. 459-460.
36 *See* Memorandum for respondent, pp. 4-5, *id.*, pp. 440-441.
37 *See* Memorandum for respondent, pp. 5-10, *id.*, pp. 441-446.

The Ruling of the Court

The Petition for Review must be granted.

The burden of proof is on respondent to prove petitioner's receipt of the PAN and FAN.

Section 228 of the National Internal Revenue Code of 1997, as amended ("***NIRC***"), requires that a taxpayer be informed of the factual and legal basis for the assessment made against it. Said assessment is otherwise void.

The above law is implemented by ***Revenue Regulations ("RR") No. 12-99***,[38] as amended by ***RR No. 18-13***.[39] ***Sec. 3.1.1*** of said issuance requires that a PAN for the proposed assessment be issued to a taxpayer:

> "3.1.1 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment**. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof)."

Sec. 3.1.6 of said issuance, meanwhile, identifies various valid modes of service for assessment notices such as PANs and FANs:

> "3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
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> (i) **The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found**. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
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> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
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> (ii) **Substituted service can be resorted to when the party is not present at the registered or known address** under the following circumstances: ✓

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[38] 6 September 1999.
[39] 28 November 2013.

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service**. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."
> (Emphasis supplied.)

From the above, the law and its implementing regulations (a) require that a taxpayer be informed of the assessment against it and (b) provide various guidelines for such act of informing. Is it incumbent on respondent, then, to prove that he properly informed a taxpayer of an assessment made against it?

The Supreme Court has declared that respondent must, indeed, prove a taxpayer's receipt of an assessment notice when the latter denies receipt of any notice. Such denial shifts the burden of proof onto the CIR, as declared in ***Barcelon Roxas Securities, Inc. v. Commissioner of Internal Revenue***[40] ("***Barcelon***"), to wit:

> "In Protector's Services, Inc. v. Court of Appeals, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.**"
> (Citations omitted; emphasis supplied.)

The above was affirmed in the oft-cited case of ***Commissioner of Internal Revenue v. Metro Star Superama***[41] ("***Metro Star Superama***"). More recently, in ***Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.***[42] ("***SEGI 2023***"), the High Court declared that the presumption that a letter duly mailed was received in the regular course of mail is a disputable assumption, so a direct denial of such receipt shifts the burden of proof to the party alleging it:

> "**The CIR cannot rely on the supposed incompetence and lack of personal knowledge of SEGI's witness to testify on the alleged non-receipt of the FLD-DDAN, because the evidence on record clearly showed that the FLD-DDAN was not properly served on SEGI or its duly authorized representative at its registered business address**. As the CTA En Banc correctly noted, the presumption that a letter duly directed and mailed was received in the regular course of the mail is merely a disputable presumption which may be controverted. **A direct denial**

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40 G.R. No. 157064, 7 August 2006.
41 G.R. No. 185371, 8 December 2010.
42 G.R. No. 223767, 24 April 2023.

> **thereof shifts the burden to the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.**"
> (Citations omitted; emphasis supplied.)

In fact, in ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***[43] ("***T Shuttle Services***"), the High Court deemed even the presentation of registry receipts insufficient to dispute a denial of receipt of mailed matters, provided that said registry receipts were not properly identified and authenticated:

> "As can be gleaned from the above provisions, service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3 (v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." **However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.**
>
> **In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.**
>
> As ruled by the CTA En Banc, the CIR's **mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN**. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent."
> (Citations omitted; emphasis supplied.)

From all of the above, then, if a taxpayer denies having received one of respondent CIR's issuances, such as a PAN or a FAN, the burden of proof falls on the CIR to prove such receipt.

Petitioner Star Sports Corporation denies having ever received any PAN or FAN. It is thus on respondents to prove that said issuances were properly served upon petitioner.

Unfortunately, respondents offered no proof of such service. Respondent CIR instead alleges that witness Ms. Membrebe lacks the requisite personal knowledge to reliably testify on the alleged non-receipt. The Court does note, with respondent, that Ms. Membrebe was unable to

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[43] G.R. No. 240729 (Resolution), 24 August 2020.

identify the exact location of petitioner's registered address, having never been there:

"JUSTICE LIBAN

You are asking for the specific location, where in Alabang Town Center, is there a unit, lot no., etc?

MS. MEMBREBE

A As far as I know, the address of the head office [of] Star Sports Corporation is the ground floor [of] Alabang Town Center. That is mentioned in the certificate of registration.

JUSTICE UY

No room number, no unit number, the entire ground floor?

MS. MEMBREBE

A As far as I know po through the certificate of registration.

ATTY. TENEFRANCIA

Q So, it is the entire floor of the Alabang Town Center, Ms. Witness?

ATTY. DELA ROSA

Objection, Your Honors, that is misleading.

JUSTICE UY

Just asking, clarifying, let the witness answer.

ATTY. DELA ROSA

Okay, your Honors.

MS. MEMBREBE

A Yes, Your Honor, my answer is just based on the Certificate of Registration.

JUSTICE LIBAN

You mean, you have not been there?

MS. MEMBREBE
No, Your Honor."[44]

Had the burden of proof been on petitioner to prove its non-receipt of the PAN and FAN, respondent's contention may have held water. It would have been more prudent, on petitioner's part, to present witnesses who had

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[44] Transcript for the Hearing held on 26 April 2022, pp. 11-13, TSN.

personal, first-hand knowledge of its dealings at its Alabang Town Center office.

However, the burden of proof is not on petitioner. Indeed, the CIR offered a similar argument in ***SEGI 2023***, as quoted above, but the Supreme Court shot down said objection because the burden of proof was not on the taxpayer: it was on the CIR. The issue of Ms. Membrebe's reliability as a witness to testify on petitioner's non-receipt is thus of no moment. To stress, the question of receipt or non-receipt is respondent's burden to discharge.

Respondent failed to prove petitioner's receipt of the PAN and FAN.

What evidence could respondents have offered to prove petitioner's receipt of his issuances? In ***Allied Banking Corporation v. Eduardo De Guzman, Sr.***[45] ("***Allied Banking***"), which was later cited in ***Commissioner of Internal Revenue v. South Entertainment Gallery Inc.***[46] ("***SEGI 2021***"), the Supreme Court identified original registry receipts, properly identified and authenticated, as the best evidence to prove the fact of receipt:

> "Similarly, in Mangahas v. CA, the Court has given importance to **the presentation of the original registry receipt to prove the fact of mailing, even ruling that the same would have constituted the best evidence thereof**. In the instant case, the Court finds that De Guzman sufficiently established the presence of the foregoing requisites necessary to give rise to the presumption that the mail matter he sent by registered mail was received in the regular course of mail. *First*, it is undisputed that his letter of revocation was properly addressed to PNB. *Second*, **in order to prove the fact of mailing, De Guzman presented an original copy of the September 4, 1991 letter of revocation, its corresponding registry receipt, as well as a Certification from the Postmaster of Muntinlupa City that the letter was posted in the post office for mailing. Undeniably, said registry receipt constitutes the piece of evidence required by the pronouncements above. The presumption, therefore, arises that the De Guzman's letter of revocation was received by PNB in the regular course of mail.**"[47]
> (Citations omitted; emphasis supplied.)

The above is also in consonance with the guidelines on service by mail as laid down in ***Sec. 3.1.6 of RR No. 12-99, as amended by RR No. 18-13***, which identified registry receipts as sufficient proof of mailing.

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45 G.R. No. 225199, 9 July 2018.
46 G.R. No. 225809, 17 March 2021.
47 To be clear, Allied Banking and SEGI 2021 do no contradict T Shuttle Services. The registry receipts in the latter case were not properly identified or authenticated, while those in the former cases were.

Unfortunately, respondents did not present any such registry receipts. Neither did they offer any other form of evidence to prove the proper service of the PAN and FAN to petitioner; they were not even able to present the PAN and FAN themselves.

Respondent CIR only offered various issuances predating the alleged issuances of the PAN and FAN, a Certificate of Tax Delinquencies/Tax Liabilities ("Certificate") issued *after* petitioner learned of the assailed WDL, an "Employee Incident Report", a Secretary's Certificate proving Ms. Membrebe's authority to represent petitioner, and the Judicial Affidavits of his witnesses.[48] None of these, however, prove that the PAN and FAN were properly served to petitioner or that it was properly informed of the assessment against it. Even the Certificate is unfit for this purpose. While respondent proffers it as proof that petitioner knew about the assessment against it, said Certificate is dated 28 September 2020, after petitioner found out about the assailed WDL through the Advisory on Receipt of Notice of Garnishment[49] it received on 4 September 2020. Given that the WDL was already issued by that time, the Certificate cannot prove that petitioner was properly informed of the assailed assessment.

The Court cannot act on the Employee Incident Report.

It would be remiss for the Court not to address the Employee Incident Report[50] ("Incident Report") offered by respondent CIR, even if he did not raise said Incident Report in his Memorandum. Said Incident Report could explain respondent's lack of evidence to prove petitioner's receipt of the PAN or FAN.

According to the Incident Report, RO Manabilang, after returning from official leave, found that the BIR Records for this case, as well as the filing cabinet in which they were kept, had been tampered with. In particular, she claims that the docket for the BIR's records on petitioner for taxable year 2014 had been removed, the plastic straw bundling said records together left untied. She also claims, in her judicial affidavit, that the PAN and FAN in question were kept in the missing docket and that her office has been unable to locate these or other relevant documents despite efforts to do so.[51] Finally, during her cross-examination, she insisted that she saw that the PAN and FAN had been "received" while she was scanning the docket.[52]

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48 *See* Respondent's Formal Offer of Evidence, Records, pp. 388-394.
49 Records, p. 168.
50 BIR Records, p. 130.
51 *See* Judicial Affidavit for Fritz Jihann P. Manabilang, pp. 2-3, Records, pp. 296-297.
52 Transcript of the Hearing held on 20 October 2022, pp. 7-9. RO Manabilang unfortunately did not specify what she saw to prove that the PAN and FAN had been received. This Court's best guess is that she implied having seen a stamp or other such marking to signify petitioner's alleged receipt of said issuances.

The Incident Report and RO Manabilang's testimony, however, are insufficient to discharge respondents' burden to prove petitioner's receipt of the PAN and FAN. As far as We know, the investigation into the incident has yet to yield any conclusive findings that could help respondent's cause here. It has not produced any copies of the PAN, FAN, or registry receipts to prove their proper service. If the investigation had produced any such proof while proceedings before this Court were underway, respondents could have belatedly offered these, such as through a Supplemental Formal Offer of Evidence, or even mentioned these in his Memorandum. Respondents, however, did not do so.

In ruling on the merits of this case, the Court cannot make use of issuances or proofs of service to which We have no access. We can only consider what is before Us. Unfortunately for respondents, what is before Us leads to the conclusion that petitioner did not, in fact, receive the PAN or FAN.

Because the assessment notices were not properly served to petitioner, the assailed assessment is void.

As We stated above, ***Sec. 228 of the NIRC*** requires that a taxpayer be informed of the assessment against it. If this requirement is not met, the assessment is void.

That a lack of notice is enough to void an assessment is based on a taxpayer's right to due process. Any given taxpayer with an assessment issued against it must be afforded the opportunity to present its case and protest said assessment, neither of which can be achieved if it was not informed of said assessment in the first place. This was explained in ***Commissioner of Internal Revenue v. Azucena Reyes***[53] ("***Reyes***"), as follows:

> "*Fourth*, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. **Not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit.**
>
> **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. In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made**. The haphazard shot

[53] G.R. Nos. 159694 & 163581, 27 January 2006.

> at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery."
> (Citations omitted; emphasis supplied.)

Returning to ***Metro Star Superama***,[54] the High Court applied this imperative to the service of a PAN specifically:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**"
> (Emphasis supplied.)

The case of ***Commissioner of Internal Revenue v. Unioil Corporation***[55] is particularly relevant to the case at bar, as it saw the Supreme Court declaring an assessment void for lack of proof of service of a PAN:

> "The existence and validity of the PAN was the threshold and only issue decided by the CTA, in Division and En Banc,when it cancelled and set aside the CIR's assessment for deficiency withholding taxes (on compensation and expanded) against Unioil. To stress, the CIR did not proffer this proof of Unioil's receipt of the PAN in their petition for review before the CTA En Banc.
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> Since it was not offered as evidence, there is nothing for this Court to consider. **Otherwise stated, the CIR failed to establish the fact of issuance of the PAN to Unioil. The CIR's failure to comply with the notice requirements under Section 228 of the 1997 NIRC effectively denied Unioil of its right to due process. Consequently, the CIR's assessment was void.**"
> (Emphasis supplied.)

The Supreme Court has been so unwavering on this point that it has even observed that it "has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99."[56] A recent example of such a declaration is ***Commissioner of Internal Revenue v. Next***

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54 *Supra* note 41.
55 G.R. No. 204405, 4 August 2021.
56 Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19, 3 October 2018.

Mobile, Inc.,[57] where the High Court affirmed that a PAN is a substantial requirement and warned that a failure to serve the same is a violation of a taxpayer's right to due process.

We have already discussed, in detail, the issue of whether petitioner actually received the PAN and FAN—We found for petitioner. Given the above pronouncements by the Supreme Court, then, respondents' failure to properly serve the PAN and FAN upon petitioner was a violation of the latter's right to due process. The assailed assessment is thus null and void.

Considering the above, the Court deems it unnecessary to cover the issue of RO Aguilar's authority to examine petitioner's accounting records despite not being named in the relevant LOA. The assessment would be void either way, given the reasons already provided.

Incidentally, that the assessment is void also shows that this Court has jurisdiction over the instant Petition.

Because the assessment is void due to the failure to properly inform petitioner of it, the WDL is the appealable decision in this case; the instant Petition is thus timely filed.

We have thus far not spoken on Our jurisdiction over the instant Petition, despite this being an issue raised by respondent. To recall, respondent CIR claims that the assailed assessment has already attained finality due to petitioner's failure to file an administrative protest to the same. In effect, petitioner's right to raise an appeal before this Court has already prescribed.

The Court disagrees.

Again, We have already determined that petitioner was never properly informed of the assessment against it. It thus could not have protested said assessment in a timely fashion, for how could it have protested an assessment about which it was never informed? To expect a taxpayer to timely protest an assessment *without first properly informing it of said assessment* would be absurd and in bad faith.

Furthermore, respondent CIR's contention that the assessment attained finality is untenable. Such finality can only be achieved if an assessment is actually valid, as held in ***T Shuttle Services***:[58]

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[57] G.R. No. 232055 (Notice), 27 April 2022.
[58] *Supra* note 43.

> "Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance, the CIR's argument necessarily fails."

In the present case, respondents' failure to properly inform petitioner of the assessment against it rendered said assessment void, as discussed above. Because it is void, the assessment never attained finality. Respondent CIR's argument necessarily fails.

What specific issuance, then, is petitioner protesting? ***Sec. 3(a)(1) of the Revised Rules of the Court of Tax Appeals, as amended***, grants this Court jurisdiction over "[d]ecisions 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". Meanwhile, under ***Sec. 228 of the NIRC***, a taxpayer looking file a judicial protest against an assessment must raise an appeal to this Court within thirty (30) days from receipt of an adverse decision regarding said assessment. Such decision usually takes the form of a Final Decision on Disputed Decision ("FDDA"), but those are usually only issued in response to an administrative protest. To reiterate, petitioner was unable to raise any such protest because it was not informed of the assessment against it; consequently, no FDDA was ever issued. Is petitioner thus barred from raising its case to the Court of Tax Appeals ("CTA"), for lack of a decision to assail?

The case of ***Commissioner of Internal Revenue v. Manila Medical Services, Inc.***[59] ("***Manila Medical Services***") answers in the negative. In said case, the Supreme Court considered a WDL as an appealable decision because the CIR was unable to prove that the taxpayer in said case ever received a FDDA:

> "*The WDL is the adverse decision appealable to the CTA and not the FDDA*
>
> **In its Petition, the CIR maintains that the FDDA, that was allegedly received by MMS on July 9, 2013, should be the adverse decision appealable to the CTA and not the WDL. However, MMS categorically denied that it received the said FDDA**. Thus, it is incumbent upon the CIR to prove by competent evidence that the FDDA was indeed received by MMS."
> (Emphasis supplied.)

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[59] G.R. No. 255473, 13 February 2023.

For more context, the CTA *En Banc* had earlier considered the WDL as the decision appealable to the CTA in Division. This call was then endorsed by the Supreme Court, who agreed that the CIR's inability to prove therein taxpayer's receipt of the FDDA barred said issuance from being the appealable decision.

The Court finds that this construction of the rules of procedure is applicable here. Petitioner never received any prior formal issuance regarding the assessment, about which it was never even informed. The final, indeed, only formal issuance on the assessment that petitioner received from respondent was the WDL. The assailed WDL may thus suffice as the appealable decision for the purposes of petitioner's judicial protest.

Petitioner acquired a copy of the WDL on 28 September 2020. Following the thirty (30)-day period for filing a judicial protest established by ***Sec. 228 of the NIRC***, it thus had until 28 October 2020 within which to file its Petition before the CTA. It filed the instant Petition on 21 October 2020, a week before the deadline and only twenty-three (23) days from its receipt of the WDL. The Petition for Review was thus timely filed, and this Court acquired jurisdiction over this case.

On the topic of the WDL, the Court shall now cover the final issue to be determined: the validity of said issuance.

A WDL based on a void assessment is, itself, also void.

In its Memorandum, petitioner insists that the WDL is void because the assessment on which it is based is void.

The Court concurs.

A void assessment bears no fruit. What this adage means is that the government is barred from collecting any tax liabilities based on a void assessment. The Supreme Court has also worded this differently as "an invalid assessment bears no valid effect".[60] As such, when an assessment is void, any WDL based upon it is also void and cannot be executed. As explained in ***Commissioner of Internal Revenue v. Pilipinas Shell Petroleum***:[61]

> "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 collection of taxes. x x x It is a step preliminary, but essential to**

[60] Commissioner of Internal Revenue v. Fitness By Design, Inc., G.R. No. 215957, 9 November 2016.
[61] G.R. Nos. 197945 & 204119-20, 9 July 2018.

> **warrant 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.
>
> In Commissioner of Internal Revenue v. Reyes (Reyes Case), the petitioner issued an assessment notice and a demand letter for alleged deficiency estate tax against the taxpayer estate. The assessment notice and demand letter simply notified the taxpayer estate of petitioner's findings, without stating the factual and legal bases for said assessment. **The Court, absent a valid assessment, refused to accord validity and effect to petitioner's collection efforts — which involved, among other things, the successive issuances of a collection letter, a final notice before seizure, and a warrant of distraint and/or levy against the taxpayer estate** — x x x"
> (Citations omitted; emphasis supplied.)

The above is especially true when a taxpayer's right to be informed of an assessment against it and present its case is violated. To quote ***Reyes***, "[w]ithout complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made."[62] A failure on the BIR's part to properly inform a taxpayer of an assessment made against it completely bars said bureau from collecting the assessed taxes.

The WDL in the case at bar does not escape this chain of consequences. As respondents failed to properly serve the Assessment Notices to petitioner, the assailed assessment is void. As the assailed assessment is void, due to a violation of petitioner's right to due process, the assailed WDL is also void.

WHEREFORE, the Petition for Review, filed on 21 October 2020, is hereby **GRANTED**. The assailed assessment for calendar year 2014 is hereby **CANCELLED** and declared **NULL AND VOID**. The assailed Warrant of Distraint and/or Levy is also hereby declared **NULL AND VOID**.

Accordingly, respondents are hereby **ENJOINED AND PROHIBITED** from collecting the amount sought by the void assessment.[63]

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62 *Supra* note 53.

63 This Court has the authority to enjoin and prohibit respondent and the BIR from collecting taxes when such collection would jeopardize the interests of a taxpayer or the government, e.g. when the taxes sought are based on a void assessment made in violation of a taxpayer's rights. *See* Sec. 2, Rule 10 of the Revised Rules of the Court of Tax Appeals, as amended; *see also* Commissioner of Internal Revenue v. QL Developments, Inc., G.R. No. 258947, 29 March 2022.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice