REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

SQUARE ONE REALTY CORPORATION, Petitioner,	**CTA Case No. 9484**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 30 2020 4:02 p.m.

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DECISION

UY, *J.*:

Before this Court is the *Petition for Review*[1] filed on October 14, 2016 by petitioner Square One Realty Corporation against respondent Commissioner of Internal Revenue (CIR), praying that the *Final Notice Before Seizure* (FNBS) dated September 15, 2016, for alleged deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT) in the aggregate amount of ₱511,012,039.60 for taxable year (TY) 2012, be declared without force and effect.

THE FACTS

Culled from the records of this case, evidence presented in this case, and as stipulated by the parties in their *Joint Stipulation of Facts and Issues* (JSFI)[2], the following are the facts of the case:

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[1] Docket – Vol. 1, pp. 10 to 23.
[2] Docket – Vol. 1, pp. 227 to 231.

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines with business address at 1098 Sanciangco Street, Otis, Pandancan, Manila.[3] It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-146-443-000.[4]

Respondent is the Commissioner of Internal Revenue who holds office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

On December 16, 2013, petitioner received a Letter of Authority No. 034-2013-00000259[6] dated October 8, 2013, issued by BIR Revenue Region (RR) No. 6, Revenue District No. 034-Paco, authorizing Revenue Officer (RO) Nasser Abinal and Group Supervisor (GS) Manuel Hernandez to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax (DST) and other taxes for the period January 1, 2012 to December 31, 2012.

Thereafter, petitioner received the *Preliminary Assessment Notice (PAN)*[7] on December 17, 2015, issued by Regional Director Araceli L. Francisco, CESO VI of RR No. 6, assessing petitioner for deficiency income tax, VAT, EWT and documentary stamp tax (DST), including increments for TY 2012 in the aggregate amount of ₱493,416,245.73.

In response to the PAN, petitioner filed a *Reply to the Preliminary Assessment Notice*[8] on January 4, 2016, requesting that the assessments for deficiency income tax, VAT, EWT and DST for TY 2012, be set aside for being devoid of factual and legal bases.

On January 13, 2016, respondent thru Regional Director Araceli L. Francisco, CESO VI, issued the *Formal Letter of Demand* (FLD)[9] with *Assessment Notices* (FAN)[10] and *Details of Discrepancies,*[11] assessing petitioner for deficiency income tax, VAT and EWT

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[3] par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues (JSFI)*, Docket - Vol. 1, p. 227.
[4] Exhibit "P-2-1", *Certificate of Registration*, Docket – Vol. 1, p. 290.
[5] par. 2, Admitted Facts, *JSFI*, Docket – Vol. 1, p. 227,
[6] Exhibit "P-3", Docket – Vol. 1, p. 291.
[7] Exhibit "P-5", Docket – Vol.1, pp. 296 to 299; Exhibit "R-17", Docket – Vol.2, pp. 538 to 540.
[8] Exhibit "P-5-1", Docket – Vol. 1, pp. 301 to 309; Exhibit "R-18", Docket – Vol.2, pp. 541 to 549.
[9] Exhibit "R-23", Docket – Vol. 2, pp. 554 to 555.
[10] Exhibits "R-20", "R-21" and "R-22", Docket – Vol. 2, pp. 551 to 553.
[11] Exhibit "R-23-A", Docket – Vol. 2, p. 556.

including increments for taxable year (TY) 2012 in the aggregate amount of ₱517,746,664.22, broken down as follows:

Tax Type	Total
Income Tax	₱ 367,538,166.48
Value-Added Tax	150,206,878.64
Expanded Withholding Tax	1,619.10
	₱ 517,746,664.22

On August 30, 2016, respondent issued *Preliminary Collection Letter* (PCL)[12], which was received by petitioner on August 31, 2016, requesting petitioner to pay its tax liabilities in the total amount of ₱517,746,663.12, broken down as follows:

Assessment/Demand Letter Number	Tax Type	Total
34-12-IT-15-0387	IT	₱367,538,166.48
34-12-VT-15-0388	VT	150,206,878.64
34-12-WE-15-0386	WE	1,618.00
TOTAL		**₱517,746,663.12**

Subsequently, petitioner received on September 15, 2016, the *FNBS*[13] issued by respondent thru Regional Director Araceli L. Francisco, CESO IV, giving petitioner the last opportunity to make the necessary settlement of its tax liabilities for TY 2012, in the aggregate amount of ₱511,012,039.60, detailed as follows:

Assessment/Demand Letter Number	Tax Type	Total
34-12-IT-15-0387	IT	₱367,538,166.48
34-12-VT-15-0388	VT	143,472,255.12
34-12-WE-15-0386	WE	1,618.00
TOTAL		**₱511,012,039.60**

On September 26, 2016, petitioner filed a *Reply to the Final Notice Before Seizure* [14] stating that without the FAN being properly served, no proceedings could be initiated for the collection of said deficiency taxes; and praying that the PCL and the FNBS be withdrawn and that the subject assessment be cancelled.

Thereafter, on October 14, 2016, petitioner filed the instant *Petition for Review*.

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[12] Exhibit "P-8", Docket – Vol. 1, p. 350.
[13] Exhibit "P-10", Docket – Vol. 1, p. 354.
[14] Exhibit "P-11", Docket – Vol. 1, pp. 355 to 359.

Respondent filed his *Answer*[15] on February 6, 2017, interposing, among others, the following special and affirmative defenses: the Court cannot exercise jurisdiction in this case as the petition was filed out of time. Allegedly, the failure of petitioner to appeal to the Court in due time made the assessments in question, final, executory and demandable. The FAN was sent, released and mailed to the taxpayer, and as such the presumption that the taxpayer received it will lie. Thus, petitioner is liable for deficiency income tax, VAT and EWT in the aggregate amount of ₱511,012,039.60 for TY 2012. Respondent maintains that petitioner was not denied due process; and that the assessment issued against petitioner is valid and lawful.

The Pre-Trial Conference, initially set on May 4, 2017[16], was reset to June 29, 2017[17], pursuant to a *Motion to Reset Pre-Trial*[18] filed on April 26, 2017 by respondent. On even date, petitioner filed its *Pre-Trial Brief;*[19] while respondent filed his *Pre-Trial Brief* [20] on May 21, 2017.

By agreement of both parties' counsels[21], they filed their *JSFI* on July 12, 2017[22] which was approved by the Court in the Resolution dated July 21, 2017.[23] Thereafter, the Court issued the *Pre-Trial Order* on August 25, 2017.[24]

During trial, petitioner presented its sole witness, Teresita D. Policarpio.[25] Petitioner filed its *Formal Offer of Evidence* on September 13, 2017.[26] In the Resolutions dated December 21, 2017[27] and June 4, 2018,[28] the Court admitted all of petitioner's evidence.

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[15] Docket – Vol. 1, pp. 79 to 86.
[16] Notice of Pre-Trial Conference, Docket – Vol. 1, pp. 88 to 89.
[17] Order dated April 26, 2017, Docket – Vol. 1, p. 209.
[18] Docket – Vol. 1, pp. 100 to 102.
[19] Docket – Vol. 1, pp. 204 to 208.
[20] Docket – Vol. 1, pp. 214 to 217.
[21] Docket – Vol. 1, pp. 224 to 225.
[22] Docket – Vol. 1, pp. 227 to 231.
[23] Docket – Vol. 1, p. 234.
[24] Docket - Vol. 1, pp. 244 to 250.
[25] *Judicial Affidavit of Teresita D. Policarpio (In Question and Answer Form)*, Exhibit "P-12", Docket – Vol. 1, pp. 106 to 116.
[26] Docket – Vol. 1, pp. 255 to 261.
[27] Docket – Vol. 1, pp. 374 to 376.
[28] Docket – Vol. 1, pp. 416 to 419.

On the other hand, respondent presented four (4) witnesses, namely: (1) RO Nasser P. Abinal[29], (2) RO Myla O. Gulle[30]; (3) RO Ma. Paz Arcilla[31], and (4) Mailing In-Charge Benhur C. Nacorda[32]. Thereafter on October 24, 2018, respondent filed his *Formal Offer of Evidence*.[33] In the Resolution dated February 22, 2019,[34] the Court admitted all of respondent's evidence.

With the filing of the "*Memorandum for the Petitioner*"[35] on May 10, 2019 and "*Respondent's Memorandum*"[36] on April 4, 2019, the case was submitted for decision in the Resolution dated May 20, 2019[37].

Hence, this Decision.

THE ISSUE

The stipulated issue[38] for the resolution of the Court is :

> **"Whether Petitioner is liable for the amount of FIVE HUNDRED ELEVEN MILLION TWELVE THOUSAND THIRTY-NINE PESOS AND SIXTY CENTAVOS (₱511,012,039.60) as deficiency income tax, value-added tax, expanded withholding tax, and administrative penalties [for] taxable year 2012."**

Petitioner's arguments:

Petitioner argues that the assessment is not final and executory since the FAN was not received by petitioner. According to petitioner, for an assessment to be valid, it must be duly served and received by the taxpayer. In this case, petitioner asserts that it did not receive the FAN, in violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997.

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[29] *Judicial Affidavit of Nasser P. Abinal*, Exhibit "R-26", Docket – Vol. 1, pp. 445 to 452.
[30] *Judicial Affidavit of Myla O. Gulle*, Exhibit "R-27", Docket – Vol. 1, pp. 472 to 477.
[31] *Judicial Affidavit of Revenue Officer Ma. Paz Arcilla,* Exhibit "R-28", Docket – Vol. 1, pp. 494 to 497.
[32] *Judicial Affidavit of Benhur Nacorda,* Exhibit "R-29", Docket – Vol. 1, pp. 432 to 434.
[33] Docket – Vol. 2, pp. 516 to 521.
[34] Docket – Vol. 2, pp. 570 to 571.
[35] Docket – Vol. 2, pp. 592 to 608.
[36] Docket – Vol. 2, pp. 578 to 585.
[37] Docket – Vol. 2, p. 610.
[38] Issues, JSFI, Docket – Vol. 1, p. 228.

With respect to what constitutes as valid proof of service, existing jurisprudence dictates that once the taxpayer denies having received the assessment notice, the burden of proof rests upon the BIR. Hence, for the alleged failure of respondent to discharge the burden of proving that the FAN was indeed duly served, the subject tax assessment is void.

Petitioner likewise avers that it is not liable to pay the total amount of ₱511,012,039.60 because the assessments for deficiency income tax and VAT resulted from the comparison of the values of real properties per petitioner's Balance Sheet, against the fair market values reflected in the Tax Declaration Certificates; and that it was error on the part of respondent to assess deficiency income taxes based solely on the resulting difference in the values of the properties.

Anent the VAT assessment, petitioner points out that there was no sale, barter or exchange transactions, as the properties remained part of petitioner's assets and as such the assessment should be cancelled for lack of factual and legal bases.

As regards the deficiency EWT, the same has no legal basis considering that petitioner is not among the Top 20,000 taxpayers.

Lastly, petitioner alleges that the computation and basis of the additional imposition of 50% surcharge in the total amount of ₱125,538,608.23; and deficiency interest of ₱134,396,213.91 is iniquitous, if not erroneous. Allegedly, there is no showing that petitioner has willfully or intentionally filed fraudulent returns and that it has faithfully complied with the filing and payment of taxes guided by existing BIR rules and regulations.

Respondent's counter-arguments:

Respondent counter-argues that petitioner is liable for deficiency income tax, VAT, EWT and administrative penalties for TY2012 and that the FLD/FAN were duly issued and served to petitioner by registered mail at its business address.

Moreover, respondent claims that for failure of petitioner to timely file its protest, the subject tax assessments have become final, executory and demandable pursuant to Section 228 of the NIRC of 1997. As such, the Court could not exercise jurisdiction over the instant *Petition for Review*.

Respondent likewise contends that the assessment has factual and legal basis. According to respondent, petitioner was subjected to income tax assessment on its undeclared plant, property and equipment, based on third party information pursuant to Sections 32 and 34 of the NIRC of 1997. Based on the same finding, adjustments on its output tax were made by the RO pursuant to Section 106, 108, and 110; and that the EWT were imposed in accordance with Section 57 of the NIRC of 1997.

Finally, respondent alleges that the assessment is valid and correct and that petitioner has the burden of proof to impugn its validity; and that for the interest of the government, the subject assessment must be paid by the respondent without unnecessary delay.

THE COURT'S RULING

Respondent argues that the Court has no jurisdiction over the instant *Petition* considering that the subject assessment has already become final, executory and demandable.

We disagree.

The Court has jurisdiction over the present case.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[39] The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[40]

Pertinent to the determination of this Court's jurisdiction over the instant case, Section 7 paragraph (a) (1) of RA 1125, as amended by RA 9282, provides as follows:

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

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

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

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(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis and underscoring supplied.*)

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

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis and underscoring supplied.*)

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

In *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation*[41], the Supreme Court explained the term ***"other matters arising under this Code"***, as follows:

As the CIR aptly pointed out, the phrase "other matters arising under this Code," as stated in the second paragraph of Section 4 of the NIRC, **should be understood as pertaining to those <u>matters directly related</u> to the preceding phrase "disputed**

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

> **assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto"** and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers." (*Emphasis and underscoring supplied.*)

It is clear from the foregoing that the jurisdiction of the CTA to rule on ***"other matters arising under the NIRC or other laws administered by the BIR",*** include those matters which are ***<u>directly related</u>*** to the disputed assessments or refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto.

In the instant case, what is being appealed by petitioner is the validity of the FNBS dated September 15, 2016[42], issued by respondent, thru Regional Director Araceli L. Francisco, CESO IV, requiring petitioner to settle its tax liabilities for TY2012.

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

Finally, in the case of *Commissioner of Internal Revenue v. Isabela Cultural Corporation,*[43] the Supreme Court held that the FNBS which indicates that the taxpayer was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy, constitutes the CIR's final decision.

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[42] Exhibit "P-10", p. 354.
[43] G.R. No. 135210, July 11, 2001.

NO

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

The instant Petition for Review was timely filed.

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

In this case, the subject FNBS was received by petitioner on September 15, 2016. Thus, it had thirty (30) days therefrom or until October 15, 2016, to appeal and challenge its validity with the CTA.

Clearly, the filing of the *Petition for Review* on October 14, 2016, vested this Court with jurisdiction over the present petition.

Respondent failed to prove that petitioner actually received the FLD/FAN.

Petitioner denies receiving the FLD/FAN for the subject deficiency tax assessment and argues that absent the required notice, the subject assessment is void.

On the other hand, respondent insists that the FAN/FLD was sent, released and mailed, and that the same was validly served to petitioner by registered mail.

We find for petitioner.

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

> "**SEC. 228.** ***Protesting of Assessment***. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,*

That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." (*Emphasis supplied.*)

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

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

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

Based on the foregoing, respondent or his duly authorized representative shall issue the FLD/FAN, which shall be sent to the taxpayer only by *registered mail* or by *personal delivery*. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[44] Thus, it is essential for respondent to establish and prove that the said FLD/FAN were duly served to the taxpayer.

Further, in tax assessment, due process requires that the taxpayer must actually receive the assessment. Relative thereto, the pronouncement of the Supreme Court in the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[45] is instructive, to wit:

> "**Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). . .
>
> xxx xxx xxx
>
> What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative..." (*Emphasis supplied.*)

Based on the foregoing pronouncement, if the taxpayer denies having received the assessment notices, it is incumbent upon respondent to prove by competent evidence that the assessment notices were indeed received by the taxpayer.

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[44] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.
[45] G.R. No. 157064, August 7, 2006.

In the instant case, considering petitioner's categorical denial that it received the FLD/FAN sent to its registered address, it became incumbent upon respondent to prove the receipt thereof by the taxpayer.

For his part, respondent presented the following documents to prove the service of the FLD/FAN:

1. *Transmittal of Final Assessment Notice/ Demand Letter's for Mailing* dated January 13, 2016, stamped received by the Administrative Division of the BIR RR No. 6, Manila[46];

2. Transmittal Letter of the *Final Assessment Notice/s and Formal Letter of Demand/s for Mailing* dated January 13, 2016, addressed to the Postmaster, Central Post Office, dated January 13, 2016[47];

3. Judicial Affidavit of Benhur C. Nacorda, assigned at the Administrative Division of the BIR, and designated as Mailing In-Charge[48]; and

4. Judicial Affidavit of Ma. Paz Arcilla, assigned at the Billing Division of the BIR, whose principal duties include the supervision of the preparation, issuance and monitoring of demand letters, final assessment notices and transcripts of assessments of tax cases.[49]

However, the Court finds that the above pieces of evidence failed to satisfactorily prove that the FAN/FLD were actually received by petitioner.

The Transmittal letters presented by respondent only prove that the FAN/FLD were forwarded to the Administrative Division and to the Post Office for mailing, but do not establish the actual mailing and receipt thereof by petitioner.

Further, the Court cannot give credence to the testimonies of Ma. Paz Arcilla and Benhur C. Nacorda since they were not the ones

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[46] Exhibit "R-24", Docket – Vol. 2, p. 557.
[47] Exhibit "R-25", Docket – Vol. 2, p. 558.
[48] Exhibit "R-29", Docket – Vol. 1, pp. 432 to 434.
[49] Exhibit "R-28", Docket – Vol. 1, pp. 494 to 497.

who actually mailed the FAN/FLD. Pertinent portions of their testimonies are as follows:

Judicial Affidavit of Ma. Paz Arcilla[50]:

> "Q8: What did you do next Madam Witness, after your office issued the FANs and the Formal Letter of Demand with attached Details of Discrepancy to Square One Realty Corporation, if any?
>
> A: **The originals of the Final Assessment Notices and Formal Letter of Demand with attached Details of Discrepancies were transmitted on January 13, 2016 to the Administrative Division, BIR Manila, for mailing to Square One Realty Corporation with the instruction to mail then on January 13, 2016**."*(Emphasis and underscoring supplied.)*

Cross-examination of Benhur C. Nacorda[51]:

> "**ATTY. SUNIEGA**
> Q. So you are the mailing in charge of the Administrative Division of Revenue Region No. 6, right?
>
> **MR. NACORDA**
> A. Yes, ma'am.
>
> **ATTY. SUNIEGA**
> Q. In your answer to Question No. 4, you were saying that the Assessment Notices and the Formal Letter of Demand with the Details of Discrepancy were served to Square One through registered mail?
> **MR. NACORDA**
> A. As per our office record, ma'am.
>
> **ATTY. SUNIEGA**
> Q. **So you were the one who actually mailed these documents?**

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[50] *Ibid,* p. 496.
[51] Transcript of Stenographic Notes (TSN) during the hearing held on October 9, 2018, pp. 6 to 7.

MR. NACORDA
A. <u>No, ma'am</u>, because I have been assigned as mailing in charge since April 2017. That was mailed by Mr. Armando Macatangay, the retired.

ATTY. SUNIEGA
Q. The reason you did not personally serve the Assessment Notices and the Formal Letter of Demand with Details of Discrepancies is that you were instructed to mail them, is that correct?

MR. NACORDA
A. **<u>I am not the one in charge before</u>**. I have been assigned since April 2017 and that was 2016, so that was the term of Mr. Armando Macatangay, the mailing in charge before." *(Emphasis and underscoring supplied.)*

Based on the foregoing testimonies, it is clear that Ma. Paz Arcilla merely transmitted the FLD/FAN to the Administrative Division for mailing; while Benhur C. Nacardo admitted that he was not yet assigned as the Mailing In-Charge in the Administrative Division at the time when the subject FLD/FAN were mailed to petitioner. Thus, both Ma. Paz Arcilla and Benhur C. Nacorda have no personal knowledge on the actual mailing of the FLD/FAN.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[52] the Supreme Court discussed the requisite proof to show the fact of mailing of assessment notices, *to wit*:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to

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[52] G.R. No. 202695, February 29, 2016.

prove that the mailed letter was, in fact, received by the addressee.

To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." (*Emphasis and underscoring supplied.*)

In order therefore to prove the fact of mailing, respondent must have presented the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would supposedly be signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must have been presented to establish the fact of mailing.

In this case, respondent did not present the registry receipt issued by the Bureau of Posts, nor the registry return card signed by petitioner's authorized representative to prove the fact of mailing and actual receipt of the FAN/FLD by petitioner.

Taking all the foregoing into consideration, the Court finds that no competent evidence was presented by respondent to prove the actual receipt by petitioner of the FAN/FLD.

As already emphasized, strict compliance with due process requirement is necessary for a valid tax assessment. 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 the taxpayer's right to due process.[53] Having failed to prove compliance therewith, respondent denied petitioner of its right to due process.

Consequently, the deficiency tax assessments against petitioner are null and void for having been issued in violation of the due process requirements under Section 228 of the NIRC and RR No. 12-99. And considering that there is no valid assessment to begin with, the issuance of the subject FNBS is likewise void and ineffectual.

With the foregoing ruling, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency tax assessment in the total amount of amount of ₱511,012,039.60, for TY 2012 and the Final Notice Before Seizure, issued against petitioner, are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[53] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010, citing *Tupas v. Court of Appeals*, G.R. No. 89571, February 6, 1991.

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