REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MINDANAO SANITARIUM AND HOSPITAL COLLEGE INC.,
Respondent.

CTA EB NO. 2139
(CTA Case No. 8673)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, AND
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JAN 2 7 2021 4:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

In this Petition for Review, petitioner Commissioner of Internal Revenue seeks to reverse and set aside the Decision[1] promulgated on May 6, 2019 and the Resolution[2] promulgated on September 10, 2019.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies and the

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[1] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Ret. Associate Justice Esperanza R. Fabon-Victorino concurring, Court *En Banc* Docket, pp. 27-40.
[2] Court *En Banc* Docket, pp. 41-48.

Final Assessment Notices for alleged deficiency income tax and value-added tax for taxable year 2009 are **CANCELLED.**

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated on 06 May 2019)**, is **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

Culled from the records are the following antecedent facts:

"Petitioner Mindanao Sanitarium and Hospital College, Inc. is a non-stock, non-profit educational institution, organized and existing under Philippine laws, with principal office at National Highway, San Miguel, Iligan City. Its stated purposes are to promote principles of the true higher education institution and to provide proper facilities and programs for the harmonious development of the moral, intellectual, physical and spiritual powers of mankind; and to establish and maintain an institution of learning where thorough and systematic instructions shall be given in the arts, sciences and other studies embraced in the primary, intermediate and secondary levels.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On June 7, 2010, respondent issued Letter of Authority (LOA) No. 00017564, authorizing concerned revenue officers to examine petitioner's books of accounts and other accounting records for all

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[3] See Note 1, p. 39.
[4] See Note 2, p. 48.

internal revenue taxes for the period covering January 1, 2009 to December 31, 2009.

On July 25, 2011, respondent issued a Notice for Informal Conference, requesting petitioner to appear and present documentary evidence against the proposed assessment notice.

On July 17, 2012, respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies for alleged deficiency income tax and VAT in the total amount of P9,108,899.77, inclusive of legal increments for taxable year 2009.

On September 5, 2012, petitioner received the FLD/FAN, dated August 6, 2012, for alleged deficiency income tax in the amount of P6,876,627.73 and VAT in the amount of P2,335,042.20 or in the total amount of P9,211,669.93 for taxable year 2009. On September 26, 2012, petitioner filed a Protest Letter dated September 21, 2012, contesting the audit/investigation results contained in the FLD/FAN.

On June 15, 2013, petitioner received a Letter dated May 28, 2013, issued by Regional Director Alberto S. Olasiman of Revenue Region No. 16-Cagayan de Oro City, denying petitioner's protest. Hence, petitioner filed the present Petition for Review before this Court on July 15, 2013.

In his Answer (with Motion to Admit) filed on October 3, 2013, respondent argued that the Court of Tax Appeals has no jurisdiction to take cognizance of the Petition for Review considering that the assessment had become final, executory, and demandable due to petitioner's alleged obstinate refusal to submit the required supporting documents. Respondent likewise interposed that there was no error or illegality upon the manner by which petitioner's deficiency tax liabilities were assessed, and that there was observance and full compliance with the procedural due process requirements. He purportedly duly notified petitioner of the assessment, and afforded it every opportunity to actively participate in the assessment process.

As regards the factual bases of the assessment, respondent pointed out that the BIR's reliance upon the best evidence obtainable is pursuant to Section 6(B) of the NIRC of 1997 and is justified by petitioner's refusal to present the requested documents.

Anent petitioner's allegation that it is a non-stock, non-profit educational institution, respondent found the same self-serving and insufficient to justify its exemption from payment of income tax. Respondent explained that the only instance when a non-stock, non-profit educational institution may be exempted from the payment of taxes is when the revenues and assets of such institution are actually, directly and exclusively used for educational purposes. The exemption contemplated does not extend to income from trade, business, or other activity, the conduct of which is not related to the exercise or performance by an educational institution of its educational purposes or functions. In this particular case, petitioner allegedly failed to present any evidence tending to prove that the income it derived from running an educational institution are actually, directly and exclusively used for educational purposes. Thus, petitioner cannot be considered as exempt from the payment of income taxes.

With respect to petitioner's deficiency VAT, while educational services rendered by private educational institutions duly accredited by the Department of Education, Culture and Sports (DECS) and the Commission on Higher Education (CHED) and those rendered by governmental institutions are exempt from VAT under Section 109 (m) of the Tax Code, respondent, nonetheless, considered petitioner as engaged in the sale of goods or services in the course of a business pursuit pursuant to Section 105 of the Tax Code, hence, petitioner is liable for VAT as well.

Lastly, respondent stressed that there exists a presumption in favor of the propriety and exactness of the assessment against petitioner. After all, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. Petitioner's failure to do so further confirms the propriety of the assessment.

The pre-trial conference was scheduled on May 29, 2014. Petitioner's Pre-Trial Brief was filed on May 22, 2014, while respondent's Pre-Trial Brief was filed on May 26, 2014.

The parties filed their Joint Stipulation of Facts on September 10, 2014. Thereafter, the Court issued a Pre-Trial Order on October 13, 2014.

On April 13, 2015, petitioner filed its Formal Offer of Evidence, xxx.

On October 12, 2016, respondent filed his Formal Offer of Evidence, xxx.

The Court declared the case submitted for decision on May 22, 2018, considering petitioner's Memorandum filed on May 15, 2018 and the Records Verification Report issued by the Court's Judicial Records Division stating that respondent failed to file his memorandum."[5]

On May 6, 2019 and September 10, 2019, the Court in Division issued the assailed Decision and Resolution, respectively.

On October 14, 2019,[6] petitioner filed the Petition for Review. On November 21, 2019, respondent filed its Comment (On Petitioner's Petition for Review).[7]

On February 11, 2020,[8] the instant case was deemed submitted for decision. Hence, this Decision.

THE ISSUES

The following are the issues to be resolved by the Court *En Banc*: (1) Whether it is incumbent upon petitioner to prove actual receipt of the Preliminary Assessment Notice (PAN); and (2) Whether the subject Final Assessment Notice (FAN) is void.

THE RULING

The petition is unmeritorious.

The subject PAN was sent to a different entity. Hence, there is no actual receipt of PAN by respondent.

In support of his Petition, petitioner insists that:

"The fact of mailing was supported by the corresponding Master List of Mail Matters and even a certification from the Post Office. If indeed the *onus probandi* had shifted to petitioner, he maintains his position that he has sufficiently proven with overwhelming evidence that respondent indeed received the PAN in the due course of mail."[9]

In ruling against petitioner, the Court in Division found that:

[5] See Note 1, pp. 27-31.
[6] Court *En Banc* Docket, pp. 5-18.
[7] Court *En Banc* Docket, pp. 52-56.
[8] Resolution, Court *En Banc* Docket, pp. 62-63.
[9] Discussion, Petition for Review, Court *En Banc* Docket, p. 9.

"Respondent failed to discharge this duty and to present substantial evidence showing that petitioner indeed received the PAN dated July 17, 2012. In support of his allegation of proper service of PAN, respondent merely presented the Masterlist of Registered Mail prepared and signed by Elmie L. Ello of BIR Revenue Region No. 16-Cagayan de Oro City, where the name of petitioner, its address, and registry receipt number were noted, and the Certification issued by Postmaster IV Macapado P. Caye. A perusal of the Certification, however, proves that the letter was addressed and delivered to a certain Mindanao Sanitarium and Hospital. **Records reveal that Mindanao Sanitarium and Hospital College, Inc. (petitioner) and Mindanao Sanitarium and Hospital, Inc. are two different entities.** Hence, the Court does not put much credence to these exhibits since they do not prove that the PAN was duly served upon petitioner. **Furthermore, the registry receipt of the assessment notice could have been obtained easily. Yet respondent failed to present such evidence.**"[10]

A careful review of the records shows that, indeed, the subject PAN was addressed and delivered to **Mindanao Sanitarium and Hospital, Inc.** which is an entity different from respondent. Thus, it is clearly established that respondent did not receive the PAN.

A PAN is part of the due process rights of respondent. Absence of PAN renders any assessment void.

In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[11] the Supreme Court explained the nature of PAN as part of due process rights of taxpayers, as follows:

"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 be informed of the facts and the law upon which the assessment is made. 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.

[10] See Note 1, pp. 34-35.
[11] G.R. No. 185371, December 8, 2010.

xxx xxx xxx

> xxx, 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."

As found earlier, respondent did not receive the subject PAN because it was addressed and delivered to a different entity. Pursuant to the doctrine laid down in *Metro Star Superama*, such omission by petitioner constitutes a denial of respondent's right to due process. Hence, the subject assessment is void.

Considering the foregoing, the Court *En Banc* finds no reason to disturb the ruling of the Court in Division. Hence, the denial of the instant Petition is in order.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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