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

***SECOND DIVISION***

**RAEKEN MARKETING CO., INC.,**
*Petitioner,*

**CTA Case No. 8759**

- versus-

**Members:**

**Castañeda, Jr.,** *Chairperson*
**Casanova,** and
**Cotangco-Manalastas,** *JJ.*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**Promulgated:**
JUN 24 2015
11:57 a.m.

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# DECISION

**COTANGCO-MANALASTAS, *J.:***

Before this Court is the Petition for Review filed on January 14, 2014 by Raeken Marketing Co., Inc., seeking to declare as null and void the Warrant of Distraint and/or Levy No. 11-1518-13 dated December 12, 2013 issued by respondent Commissioner of Internal Revenue against it and to direct respondent to cancel and withdraw the assessments for alleged deficiency income tax and value-added tax (VAT) for taxable year 2007 in the amount of ₱16,262,351.33.

## FACTS

Petitioner Raeken Marketing Co., Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office at Room 209, Plaza Andrea Building, Don Antonio Heights, Diliman, Quezon City.[1]

[1] Par. 1, Stipulation of Admitted Facts, Joint Stipulation by the Parties (JSP), docket, p. 372.

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), charged with the assessment and collection of all national internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

A Subpoena Duces Tecum dated April 14, 2009 was issued by Mr. Jose Ric A. Cabrera, Chief of the Legal Division of BIR Revenue Region No. 7-Quezon City, addressed to the president of petitioner for the production of its books of accounts and other accounting records for taxable year 2007.[2]

Thereafter, Revenue District Officer Benito B. Wong of BIR Revenue Region No. 7, Revenue District Office No. 28, Novaliches, Quezon City sent a Notice of Informal Conference dated September 3, 2009 to petitioner, informing petitioner that the report of investigation of its tax accountabilities for taxable year 2007 has been submitted by Revenue Officer Ernesto B. Penullar for appropriate action and further requesting petitioner to appear for an informal conference.[3]

Subsequently, an Agreement Form[4] dated September 23, 2009 was executed by petitioner and Revenue Officer Penullar, Group Supervisor Ester C. Maneja and Revenue District Officer Wong, wherein petitioner agreed to pay the deficiency taxes in the amount of ₱70,005.00, including legal increments. The Agreement Form also states that the report of investigation submitted by the Revenue Officers is subject to review and approval by higher authorities and that Letter Notices that may emanate from them shall not be covered by the said Agreement.

However, on May 28, 2013, Ms. Ruth Vivian G. Gadia, Chief of the Collection Division of Revenue Region No. 7-Quezon City issued a Preliminary Collection Letter, stating that an assessment notice dated June 15, 2012 was sent to petitioner for the collection of its unpaid tax liabilities for taxable year 2007 and that petitioner is requested to pay the said tax liabilities.[5]

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[2] Exhibit "P-17", docket, p. 471.
[3] Exhibit "P-19", docket, p. 473.
[4] Exhibit "P-9", docket, p. 458.
[5] Exhibit "P-13", docket, p. 465.

On December 12, 2013, a Warrant of Distraint and/or Levy No. 11-1518-13 was issued by Ms. Ruth Vivian G. Gadia in view of petitioner's failure to pay the amount of tax assessed for taxable year 2007 as per Assessment/Demand No. F-028-LNTF-07-VT-023/IT.[6]

On December 23, 2013, petitioner filed a letter dated December 18, 2013 addressed to Ms. Gadia, manifesting that its tax liabilities for taxable year 2007 had already been settled as evidenced by the Agreement Form dated September 23, 2009 and the receiving copies of BIR Payment Form No. 0605 and UCPB BTR-BIR Deposit Slip showing payments in the total amount of ₱70,005.00.[7]

In the same letter, petitioner emphasized that after the execution of the said Agreement Form on September 23, 2009 and the payment of its deficiency taxes, it did not receive any more notices of any kind or nature from the BIR until the said Preliminary Collection Letter dated May 28, 2013. Petitioner likewise denied receiving the assessment notice dated June 15, 2012.[8]

Thereafter, petitioner filed the instant Petition for Review on January 14, 2014, incorporating its Urgent Motion for Prohibition and/or Suspension of Collection of Tax.[9]

The Court granted the motion, subject to the posting of an acceptable surety bond as per Resolution[10] dated February 13, 2014.

On February 20, 2014, respondent filed her Answer[11] and interposed therein the following special and affirmative defenses:

> "13. The assessment for calendar year 2007 deficiency Income Tax in the amount of PhP9,340,962.68 and Value Added Tax in the amount of PhP6,921,388.65 were issued in accordance with applicable laws and regulations. The factual and legal bases of the assessments are contained in the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN).

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[6] Exhibit "P-6", docket, p. 450.
[7] Exhibit "P-15", docket, pp. 467-468.
[8] Exhibit "P-15", docket, p. 468.
[9] Docket, pp. 14-26.
[10] Docket, pp. 149-150.
[11] Docket, pp. 151-157.

14. Petitioner received the Final Assessment Notice on July 10, 2012. However, the Petitioner failed to file its administrative protest on the Final Assessment Notice within thirty (30) days from date of receipt thereof, hence, the assessment have already become final, executory and demandable. Consequently, this Honorable Court cannot anymore exercise jurisdiction over Petitioner's Petition for Review.

Section 228 of the Tax Code and Section 3.1.5 of Revenue Regulations No. 12-99 provides as follows:

xxx xxx xxx

15. In the OCEANIC WIRELESS NETWORK, INC. VS. COMMISSIONER OF INTERNAL REVENUE, THE COURT OF TAX APPEALS AND THE COURT OF APPEALS, GR NO. 148380 dated December 9, 2005, the Supreme Court held:

> *'The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt hereof.'*

16. Well settled is the rule that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative process (Zabat vs. Court of Appeals, 338 SCRA 551);

17. In UNION BANK OF THE PHILIPPINES VS. COURT OF APPEALS, 290 SCRA 198, the Honorable Supreme Court explained the ruled (sic) on exhaustion of administrative remedies, to wit:

> *'The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy resolution to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the court,*

*for reason of law, comity and convenience - will not entertain a case, unless, the administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct errors committed in the administrative forum.'*

18. Hence, this Petition for Review have been filed without a cause of action and warrants a dismissal inasmuch as no jurisdiction was acquired by the Honorable Court of Tax Appeals due to the failure of the Petitioner to file its administrative protest on the Final Assessment Notice;

19. Finally, Paragraph (a) of Section 222 of the National Internal Revenue Code of 1997, as amended, provides, to wit:

xxx xxx xxx

20. The Letter Notice issued by Respondent provides as hereunder quoted:

*'xxx*

*A computerized matching conducted by the Bureau on information/data provided by third party sources against your declaration per VAT returns disclosed the following discrepancy(ies) for the calendar year ended 2007.*

*xxx*

*B. LOCAL PURCHASES*

| | |
|---|---|
| *Per Summary List of Sales submitted by your suppliers* | *71,769,461.00* |
| *Domestic Purchases per Tax Returns filed* | *45,781,857.42* |
| *Under-declaration of Local Purchases* | *25,987,603.58* |
| *Percentage (%) of Discrepancy* | *36.21* |

21. Hence, the ten (10) year prescriptive period applies to this case because Petitioner filed a fraudulent return as per third party information."

The case was set for pre-trial conference on March 27, 2014.[12] Petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief were both filed on March 12, 2014.[13]

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[12] Notice of Pre-Trial Conference issued on February 21, 2014, docket, p. 158.

[13] Docket, pp. 163-174 and 175-179, respectively.

On April 11, 2014, the parties filed their Joint Stipulation by the Parties[14], which was approved as per Pre-Trial Order dated May 6, 2014.[15]

Meanwhile, in view of petitioner's compliance with the Resolution dated February 13, 2014, the Court issued a Resolution on April 23, 2014, restraining respondent from enforcing any Warrant of Distraint and Garnishment and/or Levy against petitioner and suspending the demand for payment/collection from petitioner of its alleged deficiency income and value-added taxes for taxable year 2007, until further orders from this Court.[16]

During trial, petitioner presented its witnesses, Ms. Rolita Romero Bantang[17] and Mr. Reynaldo F. Valeroso[18], who testified by way of Judicial Affidavits[19], which were both filed on April 4, 2014.

After presentation, identification, and formal offer of petitioner's marked documents, Exhibits "P-1" to "P-21", inclusive of sub-markings, were admitted as part of petitioner's documentary evidence.[20]

On the other hand, respondent presented the testimony of her lone witness, Ms. Cristeta SP. Banihit, who testified by way of a Judicial Affidavit filed on March 17, 2014.[21] As to her documentary evidence, respondent formally offered Exhibits "R-1" to "R-12-a"[22], inclusive of sub-markings, which were admitted as part of her evidence pursuant to this Court's Resolution[23] dated October 14, 2014.

The case was submitted for decision on November 13, 2014,[24] after petitioner and respondent filed their Memoranda on October 15, 2014[25] and November 10, 2014[26], respectively.

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[14] Docket, pp. 372-375.
[15] Docket, pp. 382-388.
[16] Docket, pp. 379-380.
[17] Minutes of the hearing held on June 2, 2014, docket, p. 389.
[18] Minutes of the hearing held on July 2, 2014, docket, p. 390.
[19] Exhibit "P-20", docket, pp. 227-236; Exhibit "P-21", docket, pp. 237-248.
[20] Resolution dated August 4, 2014, docket, pp. 503-504.
[21] Exhibit "R-12", docket, pp. 186-190.
[22] Docket, pp. 506-509.
[23] Docket, pp. 516-517.
[24] Docket, p. 547.
[25] Docket, pp. 518-537.
[26] Docket, pp. 538-546.

## ISSUES

The parties submitted the following issues[27] for this Court's disposition:

1. Whether or not the Warrant of Distraint and/or Levy No. 11-1518-13 dated December 12, 2013 issued by respondent Commissioner of Internal Revenue against petitioner for the alleged income tax and VAT deficiencies for taxable year 2007 is void for being issued without legal and factual bases;

2. Whether or not petitioner had received the alleged assessment notice dated June 15, 2012 or the Final Assessment Notice and Formal Letter of Demand issued by respondent;

3. Whether or not the Court of Tax Appeals has jurisdiction over the instant case;

4. Whether or not petitioner is liable for deficiency income tax and VAT for taxable year 2007 in the amount of ₱16,262,351.33 inclusive of interests; and

5. Whether or not the assessments have already become final, executory and demandable.

## DISCUSSION/RULING

The Court shall resolve first the issue of whether petitioner received the assessment notice dated June 15, 2012 or the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) issued by respondent.

Petitioner insists that it did not receive any notice of assessment, or a FAN or FLD for its purported tax liabilities for taxable year 2007. Petitioner avers that after it paid the taxes

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[27] Statement of Issues, JSP, docket, p. 373

agreed upon in the Agreement Form[28], it thought that it had fully settled all its tax liabilities for taxable year 2007.

Petitioner also claims that it was surprised to receive the Preliminary Collection Letter[29] dated May 28, 2013 from respondent after the lapse of more than three (3) years from the time of payment of the deficiency taxes on September 23, 2009.

In contrast, respondent contends that petitioner received the FAN[30] dated June 15, 2012 on July 10, 2012 as evidenced by the Registry Return Receipt (Exhibit "R-11-b"[31]). Respondent claims that petitioner failed to dispute the assessments made against it. As a consequence, the FAN had become final and executory when petitioner failed to file a protest.

At the outset, it must be emphasized that the requirement of informing the taxpayer of the assessment is mandatory as provided in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99, the pertinent portions of which are quoted hereunder for ready reference:

> "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:
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> 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**.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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[28] Exhibit "P-9", docket, p. 458.
[29] Exhibit "P-13", docket, p. 465.
[30] Exhibit "R-11", BIR Records, pp. 33-34
[31] BIR Records, p. 33.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

"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."

The afore-quoted Section 228 clearly mandates that taxpayers must be informed of the facts and the law upon which the assessment is made; otherwise, the assessment will be void. In addition, the taxpayer is granted the opportunity to protest the assessment within thirty (30) days from receipt thereof and if the protest is denied or not acted upon by respondent within the required period of time, the taxpayer is given another remedy of filing an appeal before this Court.

Similarly, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the FAN by respondent and the receipt thereof by the taxpayer as part of due process in the issuance of assessments.

Moreover, in the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[32], the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment, *to wit*:

> "xxx **the foregoing rule requires that the notice be sent *to the taxpayer*, and not merely to a disinterested party**. Although there is no specific requirement that the taxpayer should receive the notice within the said period, **due process requires at the very least that such notice actually be received**. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
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> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**." (*Emphasis supplied)*

Applying the foregoing to the present case, the Court finds that petitioner's right to due process of law was violated when the subject assessment was issued.

While respondent claims that the FAN dated June 15, 2012 was received by petitioner, petitioner denies receiving them.

To support her allegation, respondent presented the FAN[33] and its Registry Return Receipt[34].

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[32] G.R. No. 155541, January 27, 2004.
[33] Exhibit "R-11", BIR Records, pp. 33-34.
[34] Exhibit "R-11-b", BIR Records, p. 33.

From the foregoing, it appears that respondent served the FAN by registered mail in view of the presentation of the Registry Return Receipt. While it is true that a mailed letter is deemed received by petitioner in the regular course of mail, nevertheless, said presumption is merely a disputable presumption.

In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[35], the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

After a careful scrutiny of the pieces of evidence presented by respondent, the Court finds the same insufficient to prove that the FAN was indeed received by petitioner in accordance with law and pertinent jurisprudence.

In the testimony by way of a Judicial Affidavit filed on April 4, 2014, petitioner's president, Mr. Reynaldo F. Valeroso, directly denied the receipt of an assessment notice from the BIR dated June 15, 2012 or any FAN or FLD.[36] Petitioner's denial of receipt of the FAN was also mentioned in its response letter[37] to the Warrant of Distraint and/or Levy, and in its Petition for Review[38] and Memorandum[39] filed before the Court. Such direct denial shifts the burden upon respondent to prove that the letter which appears to have been mailed was indeed received by petitioner.

As already mentioned, petitioner merely presented the alleged FAN and Registry Return Receipt as if mere presentation of the same was equivalent to proof that said mail matter was received by petitioner.

In this regard, it bears stressing that mere presentation of the Registry Return Receipt is not enough to prove that the subject notices were indeed served. Receipts for registered letters and return receipts do not prove themselves; they must

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[35] G.R. No. 157064, August 7, 2006, citing *Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc.*, G.R. No. L-38540, April 30, 1987.
[36] Docket, p. 244.
[37] Exhibit "P-15", docket, pp. 467-468.
[38] Docket, pp. 14-26.
[39] Docket, pp. 518-537.

be properly authenticated in order to serve as proof of receipt of the letters.[40]

Based on the records, the Registry Return Receipt was identified by Ms. Cristeta SP. Banihit who merely testified based on the BIR Records. As admitted by Ms. Banihit during the cross-examination, she was not the one who sent the FAN since it is not within her department's jurisdiction. She likewise testified that she had no participation in the preparation of the Registry Return Receipt.[41] There is also nothing in the records which would show that respondent presented competent witness to testify on the fact of mailing of the FAN dated June 15, 2012.

Notably, respondent also failed to show that the person who signed the Registry Return Receipt is petitioner's authorized agent. It must be stressed that the Registry Return Receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."

A perusal of the Registry Return Receipt shows a signature as proof that a person received the letter. However, said Registry Return Receipt and the signature thereon are unauthenticated. Also, a further scrutiny of the evidence presented by respondent reveals that she failed to sufficiently prove that the signature in the Registry Return Receipt belongs to the authorized representative of petitioner.

Considering the foregoing, respondent failed to discharge the burden of proving that the FAN dated June 15, 2012 was actually served on and received by petitioner.

Also, respondent violated petitioner's right to due process when she issued the Warrant of Distraint and/or Levy because no valid notice of assessment was sent to petitioner. An invalid 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

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[40] *Resterio vs. People of the Philippines,* G.R. No. 177438, September 24, 2012, citing *Victor Ting Seng Dee, et al. vs. Court of Appeals, et al.*, G.R. No. 140665, November 13, 2000.
[41] Transcript of Stenographic Notes taken on September 1, 2014, pp. 11-13.

administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[42] In this case, petitioner was not properly informed of the basis of its tax liabilities.

Consequently, respondent's allegation that the FAN dated June 15, 2012 already attained finality for failure to protest the same is devoid of merit since petitioner cannot be expected to protest the FAN without first being properly informed of the basis of its tax liabilities.

Since no valid notice of assessment was sent to petitioner, the Warrant of Distraint and/or Levy No. 11-1518-13 issued by respondent against petitioner, allegedly arising from the FAN dated June 15, 2012, must be cancelled.

With the foregoing findings, the Court deems it unnecessary to resolve the remaining stipulated issues.

**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice dated June 15, 2012 for taxable year 2007 and the Warrant of Distraint and/or Levy No. 11-1518-13 dated December 12, 2013 are **CANCELLED** and **WITHDRAWN** for being null and void.

**SO ORDERED.**

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**WE CONCUR:**

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

**CAESAR A. CASANOVA**
Associate Justice

[42] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.

## ATTESTATION

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

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

## CERTIFICATION

Pursuant to Section 13, Article VIII 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