REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

REX JAYSON MIRAFLOR TUOZO, *Petitioner,*	**CTA Case No. 10638**
	Members:
-versus-	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 24 2025 1:50 p.m.

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DECISION

MANAHAN, *J.*:

Before the Court is a *Petition for Review* filed on October 26, 2021,[1] seeking that the assessment issued by respondent against petitioner for deficiency income tax, value-added tax ("**VAT**"), final withholding tax ("**FWT**"), and final withholding value-added tax ("**FWVAT**"), in the aggregate amount of ₱678,021.35 for taxable year 2018, inclusive of surcharges, interest, and penalties be cancelled and withdrawn.

THE PARTIES

Petitioner Rex Jayson Miraflor Tuozo ("**Tuozo**") is an individual taxpayer with address at 3/F Greatwork Business Center Main Building Menlor I.T. Center 1184 Quezon Avenue, Paligsahan, Quezon City.[2] He is registered with the Bureau of Internal Revenue ("**BIR**") under Taxpayer's Identification No. 300-996-027-000 as engaged in business and management consultancy activities.[3] He was previously registered at Revenue District Office No. 50 – South, Makati, and was doing

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[1] Docket, pp. 7-24.
[2] Stipulation of Facts, Par. 1, *Joint Stipulation of Facts and Issues* ("*JSFI*"), Docket, p. 263.
[3] *Id.*, Par. 2.

business at 9M One Pacific Place, HV Dela Costa Street, Bel-air, Makati City.[4]

Respondent is the duly appointed Commissioner of Internal Revenue ("**CIR**") who has the power to decide disputed assessments, refunds of internal revenue taxes, and other matters arising under the National Internal Revenue Code, as amended, or other laws or portions thereof administered by the BIR.[5]

THE FACTS

On June 21, 2019, Regional Director ("**RD**") Glen Geraldino issued a Letter of Authority ("**LOA**") with SN: eLA201600069174, authorizing Revenue Officer ("**RO**") Philipp King Cartagena, and Group Supervisor ("**GS**") Praxedio II Tulio to examine Tuozo's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2018 to December 31, 2018.[6] Relative thereto, a *Subpoena Duces Tecum* was issued on September 4, 2019.[7]

The BIR then issued the Preliminary Assessment Notice ("**PAN**") dated October 6, 2020.[8] However, Tuozo denies receipt thereof.[9]

Subsequently, RD Maridur Rosario of Revenue Region No. 8A issued the *Formal Letter of Demand* ("**FLD**") dated December 2, 2020 with attached *Details of Discrepancies* (including the corresponding *Assessment Notices*). The FLD assessed Tuozo for deficiency taxes for taxable year 2018 in the total amount of ₱678,021.35, inclusive of penalties and interest, broken down as follows:[10]

TAX TYPE	BASIC TAX DUE	INTEREST	SURCHARGE	TOTAL
Income tax	₱ 113,964.00	₱ 23,754.47	₱ 0	₱ 137,718.47
VAT	210,317.11	49,369.78	0	259,686.89
FWT	120,301.16	43,071.11	30,075.29	179,011.42

[4] *Id.*, Par. 3, p. 264.
[5] *Id.*, Par. 4.
[6] *Id.*, Par. 5; Exhibit "P-3," Docket, p. 38; Exhibit "R-2," *BIR Records* (Exhibit "R-1"), p. 1.
[7] Exhibit "R-3," *BIR Records*, p. 29.
[8] Exhibit "R-7," *BIR Records* (Exhibit "R-1"), pp. 203 to 207.
[9] *Petition for Review*, Par. 19, Docket, p. 15.
[10] Stipulation of Facts, Par. 6, *JSFI*, Docket, p. 264; Exhibit "P-4," Docket, pp. 39 to 49.

FWVAT	48,120.46	17,228.44	12,030.12	71,604.57
Compromise penalty				30,000.00
Total	**₱ 492,702.73**	**₱ 133,423.80**	**₱ 42,105.41**	**₱ 678,021.35**

On January 7, 2021, within thirty (30) days from receipt of the FLD on December 10, 2020, Tuozo filed his protest by means of a request for reconsideration of the FLD, with complete supporting documents.[11]

PROCEEDINGS BEFORE THE COURT

On October 26, 2021, Tuozo filed the instant *Petition for Review*. The CIR filed his answer on July 20, 2022,[12] and transmitted the *BIR Records* of the case on August 1, 2022.[13]

Pre-trial conference was set and held on October 12, 2022.[14] Prior thereto, *Petitioner's Pre-Trial Brief* and *Respondent's Pre-Trial Brief* were separately filed on October 7, 2022.[15] The parties' *Joint Stipulation of Facts and Issues*[16] was admitted and approved by the Court on December 20, 2022, thereby terminating the pre-trial.[17] The *Pre-Trial Order* dated January 17, 2023 was then issued.[18]

The case was thereafter referred to mediation.[19] However, mediation was unsuccessful.[20]

Trial proceeded. Tuozo testified in support of his case.[21] On August 30, 2023, he filed his *Formal Offer of Evidence*,[22]

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[11] *Id.*, Par. 7; Exhibit "P-5," Docket, pp. 50 to 104. Refer also to Exhibits "R-9," "R-9-1," "R-9-2," "R-9-3," "R-9-4," and "R-9-5," *BIR Records* (Exhibit "R-1"), pp. 209 to 220.
[12] Docket, pp. 126 to 137.
[13] *Compliance (to the Resolution dated June 9, 2022)* dated August 1, 2022, Docket, pp. 151 to 152.
[14] *Notice of Pre-Trial Conference* dated July 21, 2022, Docket, pp. 149 to 150; *Minutes of the hearing* and *Order* dated October 12, 2022, Docket, pp. 255 to 257.
[15] Docket, pp. 154 to 161, and 163 to 171, respectively.
[16] Docket, pp. 263 to 269.
[17] Docket, p. 273.
[18] Docket, pp. 275 to 280.
[19] *Joint Motion to Refer Case to Mediation*, Docket, pp. 259 to 262; *Resolution* dated December 20, 2022, Docket, p. 273.
[20] *Notice*, Docket, p. 296.
[21] Exhibit "P-7," Docket, pp. 27 to 35; *Minutes of the hearing* and *Order* dated July 26, 2023, Docket, pp. 297, and 302 to 303, respectively.
[22] Docket, pp. 313 to 317.

with the CIR's comment filed on September 8, 2023.[23] The Court admitted the offered exhibits except for Exhibit "P-6" for failure to present the original for comparison and failure to identify/mark the same.[24]

On the other hand, the CIR presented the testimony of GS Praxedio Tulio II.[25] On December 12, 2023, he filed *Respondent's Formal Offer of Evidence*,[26] with petitioner's comment filed on December 19, 2023.[27] The Court admitted all the offered exhibits.[28]

The parties filed their respective memoranda on March 20, 2024.[29] Thereafter, the case was submitted for decision on April 5, 2024.[30]

THE ISSUES

As stipulated by the parties, the following are the issues to be resolved by the Court:

I. Whether the Court has jurisdiction over the case; and

II. Whether the deficiency tax assessments for taxable year 2018 are valid.

Petitioner's arguments

Petitioner argues that the deficiency tax assessments were issued in violation of his due process rights since he did not receive copies of the *Notice of Informal Conference* and PAN. According to petitioner, service of said notices is mandatory. Petitioner also argues that even assuming that due process

[23] *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated August 29, 2023)*, Docket, pp. 322 to 325.
[24] *Resolution* dated November 21, 2023, Docket, pp. 328 to 329.
[25] Exhibit "R-11," Docket, pp. 209 to 218; *Minutes of the hearing* and *Order* dated November 22, 2023, Docket, pp. 330 and 333 to 334, respectively.
[26] Docket, pp. 382 to 387.
[27] *Comment (Re: Respondent's Formal Offer of Evidence)*, Docket, pp. 388 to 390.
[28] Docket, pp. 395 to 396.
[29] *Petitioner's Memorandum*, Docket, pp. 397 to 422; *Memorandum*, Docket, pp. 426 to 439.
[30] *Minute Resolution* dated April 5, 2024, Docket, p. 440.

was observed, there is no factual and legal bases for the deficiency tax assessments.

Respondent's counter-arguments

Respondent contends that the instant *Petition for Review* should be dismissed for being filed out of time, that there is no violation of due process in the issuance of the deficiency tax assessments, and that petitioner failed to substantiate its claim that the assessment lacks factual and legal bases.

THE COURT'S RULING

We find for petitioner.

The Court has jurisdiction over the present Petition for Review.

Section 228 of the Tax Code provides that a deficiency tax assessment may be protested administratively within thirty (30) days from receipt thereof by filing a request for reconsideration or reinvestigation. Within sixty (60) days from the filing of the protest, all relevant supporting documents shall have been submitted, *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: ...
>
> ...
>
> 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.[31]

The same provision also provides that if the CIR or his or her duly authorized representative fails to act on the protest within a period of one hundred eighty (180) days from the submission of documents, the inaction shall be appealable to the Court within thirty (30) days from the lapse of the said one hundred eighty (180)-day period.

Implementing Section 228 of the Tax Code is Section 3 of Revenue Regulations ("**RR**") No. 12-99,[32] as amended by RR No. 18-2013[33] and RR No. 7-2018,[34] which provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> ...
>
> 3.1.4 Disputed Assessment. – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

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[31] *Emphasis supplied.*
[32] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through payment of a Suggested Compromise Penalty.
[33] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
[34] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term 'the assessment shall become final' shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

...

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request for reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.[35]

In the present case, petitioner filed its request for reconsideration with attached supporting documents on

[35] *Emphasis supplied.*

January 7, 2021—within thirty (30) days from receipt of the FLD. This fact is affirmed by both parties.[36] However, respondent insists that the attached documents were only in compliance with the *Subpoena Duces Tecum* issued on September 4, 2019.[37] Since petitioner failed to support his request for reconsideration, the assessment has become final.

However, as clearly stated in the above-quoted revenue regulations, the term "relevant supporting documents" refer to "those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer." Thus, in *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[38] the Supreme Court held:

> The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

Guided by the foregoing, the Court finds that herein petitioner properly submitted on January 7, 2021 the relevant supporting documents he deemed complete and sufficient to support his request for reinvestigation. As respondent failed to act thereon within 180 days (or until July 6, 2021), petitioner has the remedy of filing a judicial appeal within 30 days therefrom or until **August 5, 2021**.

Pursuant to Supreme Court ("**SC**") Administrative Circular ("**AC**") No. 56-2021 dated July 30, 2021,[39] however, all courts and judicial offices in the National Capital Region were physically closed from August 2 to 20, 2021, and the filing and service of pleadings and motions during this period was suspended. A series of SC Circulars[40] were subsequently released extending the physical closure of courts until further

[36] Stipulation of Facts, Par. 7, *JSFI*, Docket, p. 264.
[37] *See* note 7.
[38] G.R. Nos. 172045-46, June 16, 2009 [Per J. Carpio, First Division].
[39] RE: Court Operations on 2-20 August 2021.
[40] OCA Circular No. 114-2021 dated August 20, 2021 (RE: Court Operations Starting 23 August 2021); OCA Circular No. 117-2021 dated August 28, 2021 (RE: Reiteration of OCA Circular No. 114-2021 Dated 20 August 2021); OCA Circular No. 119-2021 dated September 7, 2021 (RE: Court Operations Beginning 8 September 2021); AC No. 72-2021 dated September 15, 2021 (RE: Court Operations Beginning 16 September 2021); and AC No. 75-2021 dated October 1, 2021 (RE: Court Operations Beginning 4 October 2021).

notice. It was only on October 18, 2021 when the suspension for the filing and service was lifted, and litigants were given a period of seven (7) calendar days from October 20, 2021 within which to file their respective pleadings and motions.[41] Thus, petitioner's filing of the present *Petition for Review* on October 26, 2021 was timely made within the extended period.

Non-service of the NIC and improper service of the PAN violated petitioner's right to due process, rendering the deficiency tax assessments void.

To reiterate, Section 228 of the Tax Code mandates that when the CIR or his or her duly authorized representative finds that proper taxes should be assessed, the taxpayer shall be informed in writing of the law and the facts on which the assessment is based; otherwise, the assessment shall be void.

In the seminal case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[42] the Supreme Court highlighted the importance of sending the PAN as part of the due process requirement, and the consequence of not sending the same, under Section 228 of the Tax Code:

> "...it is clear that the sending of a PAN to taxpayer to inform him [or her] 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 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.[43]

[41] AC No. 72-2021.
[42] G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].
[43] *Citations omitted.*

Likewise, in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[44] the high court invalidated the assessment issued against the taxpayer because the CIR "did not issue [to the taxpayer] a Notice for Informal Conference and a Preliminary Assessment Notice, as required."[45]

Applying the foregoing to the instant case, the Court finds that similar irregularities attended the tax assessment issued against petitioner.

First, there is no indication that the BIR served an NIC to petitioner, as required under Section 3.1.1 of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, which reads:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> 3.1.1 **Notice for Informal Conference.** — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, ***the taxpayer shall be informed, in writing,*** by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) ***of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case.***
>
> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the

[44] G.R. No. 172598, December 21, 2007 [Per J. Velasco, Jr., Second Division].
[45] *Citations omitted.*

> case within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.[46]

Contrary to the BIR's own regulations, respondent failed to establish that the NIC was served upon petitioner. During the cross-examination of GS Praxedio Tulio, the issuance of the NIC cannot even be confirmed:

> Atty Dilag:
>
> Thank you, You Honor. Good morning, Mr. Witness. Please confirm if there was a Notice of Informal Conference or a Notice of Discrepancy that was issued in this case?
>
> A: Yes.
>
> Q: Would you be able to identify in the records the Notice of Informal Conference or Notice of Discrepancy?
>
> A: If shown to me I can verify it.
>
> Q: Can you confirm if you were present in any of the service of the notices to the petitioner?
>
> A: As I recall, the only notices were served by Revenue Officer Atty. Philippine Cartajena.
>
> Atty Dilag:
>
> So if you would be asked questions about the service, you wouldn't have any personal information or knowledge about the same?
>
> Witness:
>
> My personal knowledge regarding that will be coming only from Atty. Philip. I was not present then.
>
> Q: Alright, Mr. Witness, I checked the records previously and I was not able to see any of the Notice of Informal Conference or Notice of Discrepancy. But, will you be able to point out if there are any documents here that pertains to a Notice of Informal Conference and Notice of Discrepancy?

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[46] *Emphasis supplied.*

x x x

> A: I think its page 118, Notice of Informal Conference signed by our Revenue District Officer.
>
> Q: Was this ever received by petitioner?
>
> Witness:
>
> As far as I know Atty. Philip served this.
>
> Atty Dilag:
>
> Your Honors, I would like to manifest for the record that the document being pertained to by the witness is a document entitled Notice of Informal Conference with no date. It is found on page 118 of the BIR Records and would like to manifest that there is no indicator that this was ever received by petitioner.[47]

It bears to stress that the NIC is part of due process. It gives both the BIR and the taxpayer the opportunity to settle the case at the earliest possible time without the need of a Final Assessment Notice.[48] Here, the records show that petitioner was not given such opportunity. As such, the subject deficiency tax assessment should be declared void for violating petitioner's right to due process.

Second, respondent failed to comply with the proper mode of service of the PAN. Section 3.1.7 of the RR No. 12-99, as amended, prescribes the following modes:

> "3.1.7. 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:
>
> (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.

[47] *Transcript of Stenographic Notes* (*TSN*) of the hearing held on November 22, 2023, pp. 9 to 11.
[48] *Commissioner of Internal Revenue vs. Avon Products Manufacturing*, Inc., G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) ***Substituted service*** can be resorted to ***when the party is not present at the registered or known address*** under the following circumstances:
>
> ...
>
> 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.
>
> (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."

Based on the above regulations, service of the PAN may be made through the following modes: 1.) personal service; 2.) substituted service, under specific circumstances; and 3.) service by mail. Substituted service may be resorted to only if personal service is not practicable because the taxpayer is not present at its registered or known address. In case of substituted service, the revenue officer concerned must: 1.) bring a barangay official and two (2) disinterested witnesses; and 2.) give the notice to the barangay official.

Here, although respondent offered the PAN in evidence, he failed to present the revenue officer who could testify that it was properly served on and received by the taxpayer in accordance with law, rules, and regulations. Instead, respondent presented GS Praxedio Tulio who lacks the requisite personal knowledge to testify thereon:

> Atty. Dilag:
>
> ... Mr. Witness a question about the issuance of the Preliminary Assessment Notice, you mentioned in your Judicial Affidavit in Question No. 24 onwards that you requested for barangay assistance to have the PAN served and in the records attached to your judicial affidavit on Question 34 also, you mentioned that the people who identified or witnessed the service were Eddie Fernandez and Annalyn Maniero and Security Officer Rolly Jay Wenceslao, ***please confirm if any of these people are actually barangay officials***.
>
> A: ***Attorney, I was not present when this service was done. It was only based on the report of Atty. Philip.***
>
> Atty. Dilag:
>
> Yes, because in your judicial affidavit, you attached your request for barangay assistance addressed to Barangay Captain Dichauco but the person here who signed in your letter report to the BIR pertaining to the compliance with the requirements is that it is signed for on behalf of the punong barangay. ***Do you have any proof of who this person is, who signed for the punong barangay and if this person is a barangay official?***
>
> Witness:
>
> ***I cannot confirm because I was not the one who served that notice. It is Atty. Philip.***
>
> ...
>
> Atty. Claver:
>
> ***How do you know that the preliminary assessment notice was served by Revenue Officer Cartagena?***

A: ***From what I know, he sent it by mail.*** So when it when it was sent by mail, there was no return to sender so we presumed that it was received by the petitioner.

...

Atty. Dilag:

One recross, Your Honor. Mr. Witness, ***you mentioned that this PAN was also sent registered mail, do you have any proof or certification from the postmaster's office that this was actually received by petitioner?***

Witness: The PAN?

Q: Yes. A postmaster certification?

A: I think this is the document dated October 21, 2020.

Atty. Dilag:

Your Honor, they're showing to me their Exhibit R-6 which is the stub of the registry receipt attached to their Judicial Affidavit. No further questions, Your Honor.

JUSTICE FAJARDO:

Just a few clarifications. On page 208 and 201 of the records, the attachments to the Notice of Discrepancy and the PAN, there is an acknowledgment receipt, it's in your Exhibit R-7. You mentioned that you actually confronted Atty. Cartagena who did the service of the preliminary assessment notice?

Witness:

Yes, Your Honor.

JUSTICE FAJARDO:

Did he explain to you, because there are scribbles here – that is part of your Exhibit R-7. So what are these scribbles?

A: Your Honor, we tried the first attempt on October...

Q: Whose scribbles are these?

A: These are the annotations of the examiner of Atty. Philip. CBN

JUSTICE FAJARDO:

And then Atty. Philip was the one who also – in the acknowledgment receipt whose signature over printed name of the revenue officer who served the assessment notice, whose signature is this? Its an attachment to R-7, is that correct? Whose signature is that?

Witness: The signature here is of RO Cartagena because he was the one who served the assessment notice.

...

JUSTICE FAJARDO:

So, this is how you do it in the BIR?

A: Yes, Your Honor. We did this at least twice. After that if the taxpayer is not there, we go to the barangay. We seek assistance from the barangay for this service.

JUSTICE FAJARDO:

Yes, but internally, I just want to be clarified because you are the supervisor...

A: Yes, Your Honor.

JUSTICE FAJARDO:

So, at what point are you satisfied? Are scribbles like this, notes like this sufficient for you to say, okay, lets now resort to substituted service to the barangay? Or is there any form of an affidavit or – this is sufficient for your purposes internally?

A: Yes, Your Honor. That is what being done now.

JUSTICE FAJARDO:

You don't ask for affidavit to be executed before resort to substituted service? You just rely on notes like this?

A: Yes, Your Honor.[49]

Evidently, granting that there was valid reason for resorting to substituted service, respondent failed to establish compliance with RR No. 12-99, as amended, which requires that the PAN must be received by a barangay official.

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[49] *Emphasis supplied.*

As regards the alleged service by registered mail, well-settled is the rule that if the taxpayer denies having received an assessment notice from the BIR, it becomes incumbent upon the latter to prove the same by competent evidence.[50] In this case, the registry receipt presented by respondent does not contain sufficiently identifiable details, as likewise required under RR No. 12-99, as amended. On this score, the Supreme Court's pronouncement in *Commissioner of Internal Revenue vs. T-Shuttle Services, Inc.*[51] is applicable:

> "...***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 the FAN were actually received by respondent."

Sans any corroborating evidence such as the postmaster's certification, the fact of mailing and actual receipt of the PAN cannot be established. There being no other sufficient proof of service, the subject tax assessment clearly violates petitioner's right to due process.

The persuasiveness of the right to due process reaches both substantial and procedural rights, and the failure of the BIR 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.[52] Tax assessments issued in violation of the right to due process are null and void and bear no fruit.[53]

ACCORDINGLY, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The FLD dated December 2, 2020 (including the corresponding *Assessment Notices*) covering deficiency income tax, VAT, FWT, and

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[50] *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006 [Per J. Chico-Nazario, First Division].
[51] G.R. No. 240729, August 24, 2020 [Per J. Inting, Second Division].
[52] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016 [Per J. Mendoza, Second Division].
[53] *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007 [Per J. Velasco, Jr., Second Division].

FWVAT, including increments thereto, for taxable year 2018, in the aggregate amount of ₱678,021.35, is hereby **CANCELLED** and **SET ASIDE** for being **VOID**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

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.

Catherine T. Manahan

CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice