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

***FIRST DIVISION***

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| **OIC CONSTRUCTION & DEVELOPMENT CORPORATION,** *Petitioner,* | **CTA Case No. 8851** |
| -*versus*- | Members: |
| | **DEL ROSARIO,** *P.J, Chairperson* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: MAY 29 2020 ; 1:35 P.M |

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**D E C I S I O N**

**MANAHAN, *J.:***

This is a Petition for Review filed by OIC Construction & Development Corporation on July 20, 2014 praying for the following reliefs:

1) Temporarily enjoin the respondent or any of his duly authorized representative from enforcing the *Warrant of Distraint and/or Levy* (WDL) dated July 14, 2014;
2) Declare the said WDL as invalid;
3) Permanently enjoin the respondent or any of his duly authorized representative from enforcing the said WDL; and
4) Direct the respondent or any of his duly authorized representatives to withdraw and/or cancel any assessment, if any, covering the taxable year 2008 and/or such taxable years as may have been contemplated in the said WDL.[1]

[1] Summary of the Case, Pre-Trial Order dated July 20, 2015, Docket, p. 304.

**THE PARTIES**

Petitioner OIC Construction & Development Corporation is registered with the BIR under Tax Identification Number 000-348-758-000, with address at Unit 2002, Summit One Tower, 530 Shaw Blvd., Highway Hills, Mandaluyong City.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who is duly appointed and empowered to perform the duties of his office, including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code or other laws or portions thereof administered by the BIR, subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.[3]

**THE FACTS**

On February 2, 2010, a *Letter of Authority* (LOA) No. LOA 200800000607 was issued by Regional Director Alfredo V. Misajon, Revenue Region (RR) No. 6 – Manila,[4] authorizing Revenue Officer (RO) Teresita P. Reyes and Group Supervisor (GS) Carolyn B. Labao of Revenue District Office (RDO) No. 033 – Malate-Intramuros-Ermita-Port Area Manila to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2008 to December 31, 2008. Petitioner's address indicated in the LOA is Carmen Apt., Roxas Boulevard Malate, Manila. RDO No. 33 is under RR No. 6 – Manila.[5]

Petitioner filed an *Application for Registration (BIR Form No. 1903)* with RDO No. 041 – Mandaluyong City on March 14, 2011, indicating its business address at "Unit 2002 Summit One Tower, 530 Shaw Blvd., Mandaluyong City".[6]

Accordingly, on April 5, 2011, petitioner was issued a BIR Certificate of Registration (COR) by RDO No. 041, under RR No.

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[2] Exhibit "P-1", Docket, p. 75.
[3] Par. 1, Statement of Facts, *Joint Statement of Facts and Issues* (JSFI), p. 289.
[4] Exhibit "R-2", *BIR Records*, p. 84.
[5] Par. 6, *JSFI*, Docket, p. 290.
[6] Exhibit "P-3", Docket, p. 76.

7, indicating petitioner's address at Unit 2002 Summit One Tower 530 Shaw Blvd Highway Hills Mandaluyong City 1550. The said COR has, *inter alia,* the following notation: "TRANSFERRED FROM RDO 033".[7]

Thereafter, a Preliminary Assessment Notice (PAN) was issued by RR No. 6 on March 29, 2012 against petitioner,[8] as well as a Formal Letter of Demand (FLD) with Assessment Notice Nos. 33-08-IT-3334 and 33-08-IAET-3335, all dated April 13, 2012,[9] assessing petitioner of deficiency income tax and deficiency improperly accumulated earnings tax. All these notices indicate petitioner's address at Carmen Apt., Roxas Boulevard, Malate, Manila.

By virtue of a Memorandum of Assignment dated September 6, 2012,[10] the case was assigned to RO Elizabeth F. Ginete of RDO No. 033 with the instruction, among others, that she "...[c]onduct a verification whether the said account/s has/have already been paid or settled. If paid, secure a copy of the official receipt of any evidence of the settlement thereof. If it is not yet paid or settled, demand from the taxpayer the payment thereof. xxx"

On October 12, 2012, petitioner received the Preliminary Collection Letter (PCL) dated September 14, 2012,[11] holding petitioner liable for alleged deficiency taxes in the total amount of ₱18,371,868.30 for taxable year 2008, pursuant to *Demand/Assessment Notice* Nos. 33-08-IT-3334 and 33-08-IAET-3335 issued on April 13, 2012, to wit:

| | TAX DUE | SURCHARGE | INTEREST | COMPROMISE | TOTAL AMOUNT DUE |
|---|---|---|---|---|---|
| Deficiency income tax | ₱11,307,391.25 | - | ₱6,784,434.75 | - | ₱18,091,826.00 |
| Deficiency improperly accumulated earnings tax | ₱151,374.22 | ₱37,843.55 | 90,824.53 | - | 280,042.30 |
| | | | | Total | **₱18,371,868.30** |

[7] Exhibit "P-2", Docket, p. 75.
[8] Exhibit "R-8", *BIR Records*, pp. 187 to 190.
[9] Exhibit "R-9", *BIR Records*, pp. 194 to 195 and 191; Par. 5, *JSFI*, Docket, p. 290.
[10] Exhibit "R-10", *BIR Records*, p. 193 or p. 197.
[11] Exhibits "P-7" and "R-11", *BIR Records*, p. 198; Par. 10, *Petition for Review*, Docket, p. 9; Par. 4, JSFI, Docket, p. 290.

Attached to the said PCL are the following documents,[12] *viz*:

a. Assessment Notice No. 33-08-IAET-3335 dated April 13, 2012;[13]
b. Assessment Notice No. 33-08-IT-3334 dated April 13, 2012;[14]
c. FLD dated April 13, 2012;[15] and
d. Final Opportunity Notice dated September 17, 2012.[16]

On October 17, 2012, petitioner, through counsel, filed the letter dated October 16, 2012[17] with RR No. 6 of RDO No. 33 (Admin Section), contesting the issuance of said PCL.

In response to said letter, RO Elizabeth F. Ginete of BIR RDO No. 33, wrote a letter dated January 4, 2013,[18] stating, *inter alia*, that the "subject taxpayer *(sic)* delinquent accounts case is final and executory, however so as not to jeopardize the interest of the government to collect taxes, this case will be forwarded to Revenue District Office No. 41 – Mandaluyong City wherein you are presently registered xxx".

By virtue of a Memorandum of Assignment dated May 23, 2014,[19] the case was assigned to RO Loida E. Taguiam of the Collection Division of RR No. 7 with the instruction, among others, that she "prepare, issue and serve approved Warrant of Distraint and/or Levy (WDL) personally to the delinquent taxpayer or persons having in actual possession or has control over the delinquent taxpayer's properties (including receivables); or constructive service, if the need arises" and "prepare and serve the duly approved Warrant of Garnishment (WOG) to the banks."

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[12] Pars. 2 to 3, *Joint Statement of Facts and Issues* (JSFI), Docket, pp. 289 to 290.
[13] Refer to Exhibit "P-10", *BIR Records*, p. 191.
[14] Refer to Exhibit "P-11", *BIR Records*, p. 191.
[15] Refer to Exhibits "P-8" and "R-9", *BIR Records*, pp. 194 to 195.
[16] Refer to Exhibit "P-9", Docket, p. 83. This letter has reference to petitioner's alleged failure to file its inventory list for taxable year 2011.
[17] Exhibit "P-12", Docket, pp. 195 to 207.
[18] Exhibit "R-13", *BIR Records*, p. 222.
[19] Exhibit "R-14", *BIR Records*, p. 227.

On July 15, 2014, the Collection Division of BIR RR No. 7 served the WDL No. RR7-2014-427 dated July 14, 2014 against petitioner.[20]

In response to the WDL issued by respondent, petitioner filed the instant *Petition for Review (With Motion for the Suspension of Collection of Tax)* on July 30, 2014.[21] The instant case was initially raffled to the Third Division of this Court, but was later on transferred to the First Division.[22]

In the meantime, the Collection Division of RR No. 7 issued the letter dated August 14, 2014, addressed to the Chief of the Assessor's Office of Mandaluyong City, requesting for a certificate of property holdings of petitioner.[23] The Collection Division likewise issued various Warrants of Garnishment (WOGs) dated August 29, 2014,[24] which were served to several banks where petitioner maintains accounts in order to collect the amount allegedly due from petitioner.

The hearings for petitioner's Motion for the Suspension of Collection of Tax were held on September 8, 2014[25] and October 13, 2014.[26] Petitioner presented therein the following witnesses: (1) Engr. Jovencio Maligro, Jr.,[27] petitioner's Assistant Manager; (2) Mr. Alfred Cebedo,[28] petitioner's Project Engineer; and (3) Atty. Ceferino S. Paredes, Jr.,[29] petitioner's lawyer.

Respondent filed his *Opposition* (On Petitioner's Motion for the Suspension of Collection of Tax and Motion to Lift the Order of Distraint and Levy) on October 3, 2014,[30] while petitioner filed its Reply [To Respondent's Opposition on Petitioner's

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[20] Exhibits "P-14" and "R-15", *BIR Records*, p. 229.
[21] Docket, pp. 6 to 26.
[22] Order dated September 19, 2018, Docket, p. 504.
[23] Exhibit "R-18", *BIR Records*, p. 242.
[24] Exhibit "R-17", *BIR Records*, pp. 231 to 240.
[25] Minutes of the hearing dated September 8, 2014, Docket, p. 118.
[26] Minutes of the hearing dated October 13, 2014, Docket, p. 150.
[27] Exhibit "P-1", Docket, pp. 66 to 74; Minutes of the hearing dated September 8, 2014, Docket, p. 118.
[28] Exhibit "P-15", Docket, pp. 112 to 117; Minutes of the hearing dated September 8, 2014, Docket, p. 118.
[29] Exhibit "P-16", Docket, pp. 142 to 146; Minutes of the Hearing dated October 13, 2014, Docket, p. 150.
[30] Docket, pp. 139 to 141.

Motion for the Suspension of Collection of Tax, and Motion to Lift the Order of Distraint and Levy] on October 13, 2014.[31]

On October 15, 2014, respondent filed his *Answer*,[32] to the Petition for Review.

Respondent transmitted the BIR Records of the instant case on October 21, 2014.[33]

The Pre-Trial Conference was initially set on December 11, 2014.[34] However, upon Court's Resolutions dated December 5, 2014[35] and January 23, 2015,[36] respondent's filing of an Urgent Motion to Cancel and Reset Pre-Trial on March 3, 2015,[37] and petitioner's filing of an Urgent Motion for Postponement on March 26, 2015,[38] the Pre-Trial Conference was further reset to, and was eventually held on, May 19, 2015.[39]

Petitioner filed its Formal Offer of Evidence, in support of its Motion for the Suspension of Collection of Tax, on October 27, 2014.[40]

Petitioner's Pre-Trial Brief and Amended Pre-Trial Brief were filed on December 1, 2014[41] and December 4, 2014,[42] respectively; while the Pre-Trial Brief for the Respondent was filed on May 18, 2015.[43]

Meanwhile, petitioner's Motion for the Suspension of Collection of Tax was denied, for lack of merit, by the Court in the Resolution dated January 14, 2015.[44]

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[31] Docket, pp. 151 to 153.
[32] Docket, pp. 160 to 163.
[33] Docket, pp. 167 to 168.
[34] Notice of Pre-Trial Conference dated October 22, 2014, Docket, p. 169.
[35] Docket, p. 253.
[36] Docket, p. 262.
[37] Docket, pp. 263 to 265; Resolution dated March 5, 2015, Docket, p. 268.
[38] Docket, pp. 269 to 271; Order dated March 30, 2015, Docket, p. 274.
[39] Minutes of the hearing held on May 19, 2015, Docket, p. 281; Resolution dated May 26, 2015, Docket, pp. 286 to 287.
[40] Docket, pp. 170 to 174.
[41] Docket, pp. 239 to 242.
[42] Docket, pp. 244 to 251.
[43] Docket, pp. 277 to 280.
[44] Docket, pp. 255 to 260.

The parties filed their Joint Stipulation of Facts and Issues on July 3, 2015.[45] Thereafter, the Pre-Trial Order dated July 20, 2015 was issued.[46]

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimony of Engr. Jovencio Maligro, Jr.[47] Petitioner manifested that it shall adopt the testimonies of its witnesses in the Motion for Suspension of Collection of Tax.[48]

On October 9, 2015, petitioner filed its Formal Offer of Evidence.[49] Respondent failed to file his comment thereon.[50]

In the Resolution dated October 28, 2015,[51] petitioner's Exhibits were admitted by the Court, *except* for Exhibits "P-4", "P-5" and "P-6", for failure to present the originals for comparison.

Respondent on his part, likewise presented documentary and testimonial evidence. As for his testimonial evidence, respondent offered the testimonies of the following individuals, namely: (1) Ms. Loida E. Taguiam,[52] BIR employee assigned at Arrears Management Team (AMT), RR-7 Collection Division of the BIR; and (2) Ms. Elizabeth F. Ginete,[53] then respondent's Seizure Agent.

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[45] Docket, pp. 289 to 292.
[46] Docket, pp. 304 to 311.
[47] Exhibit "P-1", Docket, pp. 66 to 74; Minutes of the hearing held on September 14, 2015 and Resolution dated September 24, 2015, Docket, pp. 318, and 320 to 321, respectively.
[48] Minutes of the hearing dated September 14, 2015, Docket, p. 318.
[49] Docket, pp. 322 to 327.
[50] Records Verification dated October 20, 2015 issued by the Judicial Records Division of this Court, Docket, p. 385.
[51] Docket, p. 388.
[52] The Judicial Affidavit of Ms. Loida Taguiam was offered as Exhibit "R-21", but was actually marked as Exhibit "R-22", Docket, pp. 427 to 430; Minutes of the hearing held on, and Order dated, February 20, 2017, Docket, pp. 439 to 440.
[53] Exhibit "R-20", Docket, pp. 450 to 453; Minutes of the hearing, and Order dated, July 31, 2017, Docket, pp. 459 to 460.

Thereafter, respondent's Formal Offer of Evidence was filed on August 23, 2018.[54] Petitioner failed to file its comment thereon.[55]

In the Resolution dated December 6, 2018,[56] the Court: (1) admitted respondent's Exhibits, *except* for Exhibit "R-16", as it is not in the record of the case; and (2) gave the parties a period of thirty (30) days from notice to file their respective memorandum. Nevertheless, in the same Resolution, the Court noted respondent's *Memorandum,* which was filed on September 12, 2018.[57]

Petitioner failed to file its memorandum.[58]

The case was considered submitted for decision on March 21, 2019.[59]

**THE ISSUES**

The parties submitted the following issues for this Court's resolution,[60] to wit:

> "A.) Whether or not the Warrant of Distraint and/or Levy dated July 14, 2014 issued by respondent (through Revenue Region No. 7) is valid.
>
> B.) Whether or not the right to assess by the respondent has already prescribed.
>
> C.) Whether or not the Honorable Court has the right to enjoin the respondent from enforcing the Warrant of Distraint and/or Levy dated July 14, 2014 issued against the petitioner.
>
> D.) Whether or not the assessment has become final, executory and demandable by reason

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[54] Docket, pp. 484 to 491.
[55] Records Verification dated September 17, 2018 issued by the issued by the Judicial Records Division of this Court, Docket, p. 499.
[56] Docket, pp. 509 to 510.
[57] Refer to Docket, pp. 493 to 498.
[58] Records Verification dated March 6, 2019 issued by the Judicial Records Division of this Court, Docket, p. 511.
[59] Resolution dated March 21, 2019, Docket, p. 513.
[60] Issues, *JSFI*, Docket, pp. 290 to 291.

of the failure of the petitioner to timely file a valid protest against the assessment and by reason of failure of the petitioner to timely file the Petition for Review pursuant to the provisions of Section 228 of the Tax Code.

E.) Whether or not the petitioner is liable for the deficiency taxes as contained in the Formal letter of Demand and Assessment Notices for the year 2008."

**Petitioner's arguments:**

Petitioner argues that the issuance of the WDL dated July 14, 2014 by RR No. 7 is not valid on the ground that the tax assessments issued against it are void for being issued in violation of its right to due process.

Petitioner contends that it did not receive any prior assessment notice subject of the PCL dated September 14, 2012 and WDL dated July 14, 2014. It submits that before any WDL may be issued by respondent, it must first show that the due process requirement provided under RR 12-99 has been followed. Petitioner suspects that the PAN as well as the FAN were served by respondent in its old address at Carmen Apartment, Roxas Boulevard, Malate, Manila and not at its current address at Unit 2002 Summit One Tower 530 Shaw Blvd., Mandaluyong City. Petitioner insists that it properly informed the BIR of its change of address as evidenced by its new COR.

In addition, petitioner claims that the right of respondent had already prescribed. To illustrate its point, petitioner narrates that the WDL issued on July 14, 2014 covered the taxable year 2008 which is way beyond the period prescribed in Sections 203 and 223 of the 1997 NIRC, as amended. Petitioner avers that respondent only had a period of three (3) years to assess its tax liabilities and when reckoned from taxable year 2008, the 3 year period has already elapsed.

**Respondent's counter- arguments:**

In his Answer filed on October 15, 2014, respondent interposed the following special and affirmative defenses, and we quote:

> "11. All presumptions are in favor of the correctness of the Assessment.
>
> 12. The Preliminary Assessment Notice and the Final Assessment Notice for the year 2008 against the petitioner were issued in compliance with the provisions of Section 228 of the National Internal Revenue Code and in accordance with existing Revenue Rules and Regulations relative to the right of the taxpayer to be informed of the factual and legal bases upon which the assessment was made.
>
> 13. The herein petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent to the petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.
>
> 14. The herein Assessment has already become final, executory and demandable by reason of the failure of the petitioner to timely file a protest against the same and by reason of the failure of the petitioner to timely file the Petition for Review in accordance with the provisions of Section 228 of the NIRC, as amended.
>
> 15. That in fact, summary remedies for the collection of the delinquent tax has already been commenced by the Respondent."

In a nutshell, respondent makes general contentions and averments in defending the assessments issued against petitioner, such as petitioner is liable to pay deficiency taxes for taxable period 2008; that settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith; that absent any proof of bad faith or negligence on the part of the revenue officers/examiners, their findings must be respected and held; and that the assessment has already become final, executory and demandable by reason of the failure of the petitioner to timely file a protest against the same and by reason of the failure of the petitioner to timely file the petition for review in accordance with the provisions of Section 228 of the National Internal Revenue Code (NIRC), as amended.[61]

## THE RULING OF THE COURT

For an orderly resolution of the foregoing issues, the Court shall first determine whether it has jurisdiction to enjoin respondent from enforcing the WDL dated July 14, 2014 issued against petitioner.

Based on the undisputed facts of the case and relevant laws and jurisprudence, we find that the Court has jurisdiction to enjoin the enforcement of the WDL issued against petitioner.

Section 7(a)(1) of RA No. 1125,[62] as amended by RA No. 9282,[63] provides:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (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 **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*

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[61] Par. 14, respondent's *Answer*, Docket, p. 162; last paragraph of Discussion, respondent's *Memorandum*, Docket, p. 495.

[62] AN ACT CREATING THE COURT OF TAX APPEALS.

[63] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* [64] the Supreme Court held that this Court has jurisdiction to review, on appeal, "other matters" arising under the NIRC or other laws administered by the BIR which include the determination of whether the WDL issued by the BIR is valid, and we quote:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David,* **we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue**. Also, in *Commissioner of Internal Revenue v. Court of Appeals,* the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." (Emphasis Supplied)

It is well-settled that this Court has the authority or jurisdiction to act on a petition to invalidate or annul the distraint orders of the respondent. Correspondingly, this Court may look into the validity of the subject WDL issued by respondent, and may, in its discretion, enjoin the enforcement thereof.

The jurisdiction of the Court over the instant Petition for Review having been settled, we now proceed to look into the other arguments raised by petitioner.

Petitioner contends that the BIR did not observe the due process requirements in the issuance of a deficiency tax assessment prescribed under relevant laws and regulations because it did not receive any prior assessment notice subject of the PCL dated September 14, 2012 and the WDL dated July 14, 2014 thereby depriving it of its right to be heard or to present its side of the controversy.

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[64] G.R. No. 162852, December 16, 2004.

Respondent counters that the PAN and the FAN for the year 2008 were issued in compliance with the provisions of Section 228 of the 1997 NIRC, as amended, and in accordance with existing revenue rules and regulations relative to the right of the taxpayer to be informed of the factual and legal bases upon which the assessment was made.[65]

We find petitioner's argument meritorious.

Section 228 of the 1997 NIRC, as amended, reads:

> "Section 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 pre-assessment notice** shall **not** be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> **The taxpayer 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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[65] Par. 12, respondent's *Answer*, Docket, p. 161.

xxx xxx xxx." (Emphasis supplied)

Based on the foregoing provision, as a general rule, the concerned taxpayer must first be informed that he is liable for deficiency taxes through the sending of a pre-assessment notice or a PAN. Furthermore, the said taxpayer is required to be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

In case the concerned taxpayer fails to respond to the PAN, the BIR shall thereafter issue a tax assessment.

Implementing the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99[66] provides, in part, as follows:

> "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:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment,** showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> 3.1.3 ***Exceptions to Prior Notice of the Assessment.*** — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice

[66] 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 Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

3.1.4 *Formal Letter of Demand and Final 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 supplied)

On the basis of the foregoing provision, parts of the due process requirement in the issuance of a deficiency tax assessment are the following:

1) The issuance of a PAN, unless the case falls under any of the above-enumerated exceptions; and
2) The issuance of a FLD and assessment notice, which must be sent to the taxpayer only by registered mail or by personal delivery.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,* [67] the Supreme Court comprehensively discussed the importance of informing the taxpayer of its tax liabilities as an essential part of due process and cited its previous rulings on the matter, and we quote

> "Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> xxx xxx xxx
>
> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. xxx.
>
> 'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of

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[67] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

xxx xxx xxx

**The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notice, and Collection Letter null and void, and of no force and effect.**

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[68] this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. This Court explained:

> 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. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*,[69] this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[70] this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a

[68] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division].
[69] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[70] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].

Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

**Compliance with strict procedural requirements must be followed in the collection of taxes** as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[71]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. <u>For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed</u>.** (Emphasis supplied)

xxx. [The Commissioner of Internal Revenue's] disregard of the standards and rules renders the deficiency tax assessments null and void. xxx." (Emphasis supplied)

Based on the foregoing doctrinal pronouncements, one of the due process requirements in the issuance of tax assessments is that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD and the FAN. In case respondent or the BIR fails to observe, *inter alia*, the said requirement, it shall have the effect of rendering the subject deficiency tax assessment void, and of no force and effect, since such failure violates the due process rights of the concerned taxpayer.

A void assessment bears no valid fruit.[72]

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[71] 241 Phil. 829 (1988) [Per J. Cruz, First Division].
[72] *Samar-I Electric Cooperative vs. CIR*, G.R. No. 193100, December 10, 2014.

In this case, while a PAN[73] was issued by RR No. 6 on March 29, 2012 and an FLD[74] with Assessment Notice Nos. 33-08-IAET-3335[75] and 33-08-IT-3334[76], all dated April 13, 2012, the records do not show any proof that these notices were either sent to petitioner by registered mail or by personal delivery. An examination of these notices in the BIR Records[77] shows that there are no acknowledgment receipt appearing on these notices. Moreover, respondent's witnesses did not testify on how the PAN and FLD/Assessment Notices were served to petitioner. Respondent's witness, RO Elizabeth F. Ginente, merely testified that as per records, a PAN dated March 29, 2012 and FLD/Assessment Notices dated April 13, 2012 were issued against the taxpayer.[78] Likewise, RO Loida E. Taguiam merely testified on the issuance of the PAN and FAN/FLD as per records.[79]

Considering that there are no acknowledgment receipts appearing on the assessment notices, a determination of whether the same were sent by registered mail is in order.

Relative thereto, in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[80] the Supreme Court ruled as follows:

> "xxx. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within the said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period. GJM, however, denies ever having received any FAN.
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> 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 GJM indeed received the assessment in the due course of mail. **It has been settled that while a mailed letter is deemed**

[73] Exhibit "R-8", BIR Records, pp. 187 to190.
[74] Exhibits "P-8" and "R-9", BIR Records, pp. 194 to 195.
[75] Exhibits "P-10" and "R-9", BIR Records, p. 191.
[76] Exhibits "P-11" and "R-9", BIR Records, p. 191.
[77] Exhibit "R-1".
[78] Q/A 8, Exhibit "R-20", Docket, p. 451.
[79] Q/A 8, Exhibit "R-21" (but marked as Exhibit "R-22"), Docket, p. 428.
[80] G.R. No. 202695, February 29, 2016.

> **received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, <u>in fact</u>, 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 the taxpayer's intervention, notice of control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." (Emphasis supplied)

Based on the foregoing jurisprudential pronouncements, it is clear 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, and the direct denial of which shifts the burden to the sender to prove that the said letter was *actually* received by the addressee. Furthermore, to prove the fact of mailing, respondent must 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. 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 be presented to establish the fact of mailing.

In this case, petitioner directly denies receipt of the assessment notices.[81] Thus, the burden of proving the actual receipt thereof shifts to respondent.

Respondent, instead of providing clear and specific explanations to contravene petitioner's averments and denials, merely provided general assertions such as tax assessments are

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[81] Q/A 8, Exhibit "P-1", Docket, p. 68.

presumed correct and that such assessments have become final and executory for failure of the petitioner to timely file a valid protest.

The Court, instead turned to the records of this case and found that there are no registry receipts or registry return cards attached to the said assessment notices as borne by the BIR Records[82]. Neither did respondent present any Certification from the Bureau of Posts and any other pertinent document executed with its intervention, to prove the fact of mailing. Correspondingly, the inevitable conclusion is that the PAN dated March 29, 2012, and the subject FLD and Assessment Notices were never sent to petitioner, prior to the issuance of the subject PCL and WDL.

In other words, the Court finds that the due process requirement that the assessment notices must be served on, and received by, the taxpayer, was not complied with in this case. Hence, the subject tax assessments could not become final and executory. In fact, the same are void, and as such, bear no valid fruit.[83]

Consequently, the WDL dated July 14, 2014, which was issued upon void tax assessments, is likewise void. The spring cannot rise higher than its source.[84]

With the finding of nullity of the subject tax assessments and WDL, 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 **GRANTED**. Accordingly, the FLD, *Assessment Notice* Nos. 33-08-IT-3334 and 33-08-IAET-3335, all dated April 13, 2012, assessing petitioner for deficiency income tax and deficiency improperly accumulated earnings tax, including increments, for taxable year 2008 in the total amount of ₱18,371,868.30 are **CANCELLED and SET ASIDE**.

Respondent is likewise permanently enjoined from enforcing the collection of the deficiency tax assessments from

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[82] Exhibit "R-1".
[83] *Commissioner of Internal Revenue vs. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006.
[84] *Republic of the Philippines vs. Go Pei Hung,* G.R. No. 212785, April 4, 2018.

petitioner for taxable year 2008 amounting to ₱18,371,868.30 by virtue of the above-mentioned assessment notices. In view of the nullity thereof, the WDL dated July 14, 2014 issued against petitioner is also **CANCELLED and WITHDRAWN**.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ESPERANZA R. FABON-VICTORINO**
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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice