REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MINDANAO SANITARIUM AND HOSPITAL, INC.,
Respondent.

CTA EB No. 1807
(CTA Case No. 8927)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:

SEP 2 4 2019
2:51 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) on March 26, 2018 assailing the Decision[1] and Resolution[2] promulgated on September 15, 2017 and on February 20, 2018, respectively, by the then CTA First Division (CTA Division) in the case *Mindanao Sanitarium and Hospital, Inc. v. Commissioner of Internal Revenue*, docketed as CTA Case No. 8927. The CTA Division granted

[1] Division Docket, pp. 263-291; Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and by Associate Justice Cielito N. Mindaro-Grulla.
[2] *Id.*, pp. 303-307; Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and by Associate Justice Cielito N. Mindaro-Grulla.

MSH's petition for review and the deficiency tax assessment in the total amount of P2,468,652.51 for taxable year 2010 was cancelled and set aside.

The dispositive portion of the September 15, 2017 Decision ("Assailed Decision") reads:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency income tax assessment in the total amount of P2,469,652.51 for taxable year 2010 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

The dispositive portion of the February 20, 2018 Resolution ("Assailed Resolution") reads:

> **WHEREFORE,** in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The facts of this case as found by the then CTA First Division[3] are as follows:

> Petitioner Mindanao Sanitarium and Hospital, Inc. is a nonstock, nonprofit institution, organized and existing under the laws of the Republic of the Philippines, with principal office at National Highway, San Miguel, Iligan City.
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> xxx xxx xxx
>
> On December 21, 2009, petitioner was able to secure a BIR Ruling No. NSNP (S30E-157) 803-2009 issued by Assistant Commissioner for Legal Services, James H. Roldan, confirming that it is a *"corporation organized for charitable*

[3] Assailed Decision, pp. 1-9; Division Docket, pp. 263- 271; The petitioner and the respondent in the CTA Division case are now the respondent and the petitioner, respectively, in this CTA *En Banc* case.

purposes as contemplated under Section 30 (E) of the Tax Code of 1997."

On April 5, 2011, petitioner filed its income tax return for taxable year ending December 31, 2010.

On November 22, 2011, respondent issued Letter of Authority No. eLA201000034601 LOA-101-2011-00000247, authorizing the examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010.

On February 19, 2014, respondent allegedly issued a *Preliminary Assessment Notice* (PAN) against petitioner, assessing its deficiency income tax amounting to P2,431,264.13.

Subsequently, respondent issued the *Formal Letter of Demand* (FLD) dated March 26, 2014 with *Details of Discrepancies and Assessment Notice* dated March 27, 2014, assessing petitioner of deficiency income tax for taxable year 2010 in the amount of P2,469,652.51. Petitioner received the said documents on April 4, 2014.

On April 15, 2014, petitioner filed its letter protest, disputing the Formal Letter of Demand (FLD) and Assessment Notice, and seeking a reconsideration of the income tax assessment. Petitioner claims that it did not receive the requisite PAN, and even assuming that there was a PAN, the interest in the amount of P934,117.27 should not be imposed on the basis of good faith, and because petitioner relied on BIR Ruling No. NSNP (S30E-157) 803-2009 dated December 21, 2009, declaring it to be exempted from income under Section 30(E) of the NIRC of 1997.

Respondent issued the letter dated July 4, 2014, denying petitioner's protest and ordering the taxpayer to immediately pay its tax liabilities.

Due to the alleged inaction of respondent, petitioner filed the instant *Petition for Review* on November 11, 2014 praying to set aside the 2010 deficiency income tax assessment in the total amount of P2,469,652.21, for being bereft of legal and factual bases. In the alternative, petitioner prays that, should it be found to be subject to income tax, petitioner should not made to pay the interest charges thereon, for having relied in good faith on BIR Ruling No. NSNP (S30E-157) 803-2009 relative to its tax-exempt status.

Upon respondent's *Motion for Extension of Time to File Answer* filed on December 17, 2014, and *Manifestation* filed on January 13, 2015, and within the extended time granted by the Court on December 19, 2014, respondent filed his *Answer* on January 20, 2015, interposing the following special and affirmative defenses:

xxx xxx xxx

Thereafter, respondent forwarded the BIR Records of this case on March 24, 2015.

The Pre-Trial Conference set on April 23, 2015, was reset to April 30, 2015 upon the filing of petitioner's *Motion to Reset (April 23, 2015 Pre-Trial Conference)*. Petitioner filed its *Pre-Trial Brief* on April 13, 2015.

On April 17, 2015, respondent filed an *Urgent Motion to Defer Pre-Trial Conference* which was granted by the Court and pre-trial conference was re-scheduled to July 2, 2015. Respondent filed its *Pre-Trial Brief* on May 19, 2015.

After the Pre-Trial Conference held on July 2, 2015, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on July 20, 2015. The same was approved in the Resolution dated July 24, 2015. Subsequently, the Court issued its Pre-Trial Order on August 18, 2015.

During trial, petitioner presented the testimonies of its Vice-President for Finance, Enrino Panes, and its Director of Human Resource Department, Myrna Legaspino. On the other hand, respondent presented as witness, Revenue Officer (RO) II Tomianong Galo assigned at Revenue District 101, Iligan City.

In the Resolution dated November 16, 2016, this case was submitted for decision, taking into consideration the *Memorandum* of petitioner filed on October 25, 2016, and the *Manifestation* of respondent filed on November 11, 2016, Jc stating that he is adopting the arguments raised in his *Answer* dated January 20, 2015 as his *Memorandum*.

On September 15, 2017, the CTA Division granted the Petition for Review filed by Mindanao Sanitarium and Hospital, Inc. ("MSH", for brevity).

On February 20, 2018, the CTA Division denied MSH's Motion for Reconsideration.

On March 13, 2018, the CTA *En Banc* granted CIR's Motion for Extension of Time to File Petition for Review.

On March 26, 2018, CIR filed the Petition for Review.

On April 26, 2018, MSH filed its Comment (Re: Petition for Review) with a prayer to dismiss the Petition for Review on the ground of undated Verification and Certification and incomplete Certification of Non-Forum Shopping.

On June 18, 2018, CIR filed his Comment with Leave of Court to Submit Compliant Verification and Certification of Non-Forum Shopping.

On July 16, 2018, the CTA *En Banc* denied the Motion to Dismiss filed by MSH. The parties were granted a period of thirty (30) days from notice within which to file their respective memoranda.

On August 30, 2018, MSH filed its Memorandum. Per Records Verification dated September 20, 2018, CIR failed to file his Memorandum. On October 9, 2018, this case was submitted for decision. Hence, this decision.

ISSUES

- **Whether or not the right of respondent to due process was violated.**

- **Whether the bare denial of respondent of the receipt of the Preliminary Assessment will shift the burden of proof to petitioner.**

THIS COURT'S RULING

The petition is denied.

A careful review of the grounds and discussions raised by CIR in the instant petition reveal that these are mere reiterations of what have been considered and passed upon by the Court Division in the assailed Resolution dated February 20, 2018, which affirmed the assailed Decision dated September 15, 2017.

CIR failed to establish the receipt of PAN by MSH

CIR alleges that MSH's right to due process was not violated considering that a Preliminary Assessment Notice (PAN) dated February 19, 2014 was duly issued and served to MSH. CIR also states mere denial, unsupported by evidence could never overcome the presumption that the Revenue Officers faithfully performed their official duty.

We disagree.

As correctly found by the CTA Division, this case does not fall under the enumerated cases in Section 228 of the 1997 NIRC where preassessment notice (PAN) shall not be required.[4] It is, therefore, mandatory that PAN is issued by the CIR and received by MSH as part of due process.

In the instant case, the receipt of the PAN was denied by MSH.

In the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.,*[5] the Supreme Court ruled that, "**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 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, in fact, received by the addressee." *(Emphasis Supplied).*

[4] Assailed Decision, p. 26
[5] G.R. No. 202695, February 29, 2016.

Upon perusal of the records, We agree with the CTA Division that CIR failed to establish the fact that MSH indeed received the PAN allegedly sent by CIR through LIBCAP express.

This Court reiterates the findings of the CTA Division with respect to the irregularities in the mailing and service of the PAN as discussed in the assailed Decision and as reiterated in the assailed Resolution, as follows:[6]

> We therefore reiterate Our findings in the assailed Decision with respect to the irregularities in the mailing and service of the PAN:
>
> 1. Respondent[CIR] failed to present the required server's written report, and the corresponding official receipt issued by LIBCAP Super Express;
>
> 2. There is no showing that the server of the subject PAN accomplished the bottom portion thereof;
>
> 3. There was no indication in the testimony of RO II Galo that he has personal knowledge on the actual mailing of the PAN;
>
> 4. The Court cannot give probative value to the photocopy of LIBCAP Delivery Manifest dated February 22, 2014, found in the BIR records;
>
> 5. The LIBCAP Delivery Manifest does not provide in detail what was actually delivered to petitioner [MSH]. It merely shows that a package was delivered to petitioner which was received by a certain JC Asoy on February 22, 2014, without any clear indication that the package delivered is the subject PAN. Moreover, nowhere in the same delivery manifest does it show that it was respondent who actually sent the package to petitioner; and
>
> 6. Respondent[CIR] was not able to establish that the certain JC Asoy was authorized to receive the PAN for and on behalf of petitioner [MSH].

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant*

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[6] Assailed Resolution, p.4.

(Phils.) Energy Corporation),[7] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Receipt of the PAN is part of due process

In the consolidated cases of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[8] and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,*[9] the Supreme Court explicitly stated that, "Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99,[10] provides certain procedures to ensure that the right of the taxpayer to procedural due process is observed in tax assessments, thus:

> 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 preassessment notice shall not be required in the following cases:
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> (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
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> (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

[7] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.
[8] G.R. Nos. 201398-99, October 3, 2018.
[9] G.R. Nos. 201418-19, October 3, 2018.
[10] RR No. 12-99, was later on amended by RR No.18- 2013. RR No. 18-2013 deleted the requirement of Notice of Informal Conference in RR No. 12-99 but RR No. 7-2018 reinstated the requirement.

(e) 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.

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.

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.

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. xxx xxx 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 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.
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> On **the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.** xxx xxx xxx Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals. (*Emphases Supplied).*

In *Commissioner of Internal Revenue v. Transitions Philippines Optical, Inc.,*[11] the Supreme Court stated that, "The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN."

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,*[12] the Supreme Court explained that "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." The Supreme Court stated that, "it is clear that the sending of a

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[11] G.R. No. 227544, November 22, 2017.
[12] G.R. No. 185371, December 8, 2010.

PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void."

"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 its 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."[13]

In this case, for failure of the CIR to prove the receipt of PAN by MSH, due process was not complied with. The CTA Division is correct in cancelling the deficiency income tax assessment in the total amount of P2,469,652.51 for taxable year 2010 issued against MSH.

Based on the foregoing discussions, We find no reversible error to disturb the assailed Decision and Resolution of the then CTA First Division.

WHEREFORE, premises considered, the present Petition for Review filed by the Commissioner of Internal Revenue is **DENIED.** Accordingly, the September 15, 2017 Decision and the February 20, 2018 Resolution of the then CTA First Division in CTA Case No. 8927 are **AFFIRMED.**

SO ORDERED.

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

[13] Consolidated cases of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018, and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201418-19, October 3, 2018.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice