REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

G&W ARCHITECTS, ENGINEERS & PROJECT CONSULTANTS, CO., Petitioner,	CTA CASE NO. 8617
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 08 2016 2:10 p.m.

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DECISION

FABON-VICTORINO, J.:

This resolves the Petition for Review filed by G&W Architects, Engineers & Project Consultants, Co., for the cancellation of the assessments issued by the Commissioner of Internal Revenue (CIR) for its alleged deficiency income tax (IT) and value-added tax (VAT) for calendar year 2006 in the respective amounts of ₱257,129,633.53 and ₱89,941,757.61.

THE FACTS

Petitioner G&W Architects, Engineers & Project Consultants, Co. is a domestic general professional partnership, with principal office at Rm. 727 Downtown Center Building 516 Quintin Paredes Street, Binondo, Manila.

On the other hand, respondent CIR, as head of the Bureau of Internal Revenue (BIR) is authorized to collect taxes, grant refunds, issue and abate tax assessments and examine books and returns filed by a taxpayer to determine the correctness of the taxes paid. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 11, 2007, petitioner filed its Annual Income Tax Return (ITR) for taxable year 2006.[1]

On October 30, 2007, Letter Notice No. 030-AS-06-00-00029 with Details of Taxpayer's Supplier's Record[2] was issued by the BIR informing petitioner of its tax discrepancy for taxable year 2006.

Subsequently, Letter Authority No. 2008-00044576 dated August 27, 2009[3] was issued authorizing Revenue Officer (RO) Ronaldo Martirez and Team Head Cesar S. Sarmiento to examine petitioner's books of accounts and other accounting records for taxable year 2006.

After the tax audit investigation, the BIR issued a Final Assessment Notice (FAN) with Details of Discrepancies[4] for tax deficiency assessment of IT and VAT covering petitioner's operations for fiscal year 2006 amounting to ₱257,129,633.53 and ₱89,941,757.61, respectively, including increments. This was followed by Assessment Notice Nos. F-030-LNTF-06-IT-033[5] and Assessment Notice No. F-030-LNTF-06-VT-033[6], together with the Details of Discrepancies.

On March 5, 2013, petitioner received a Final Notice Before Seizure dated February 8, 2013[7], issued by RO Lorna S. Tobias of Revenue District Office (RDO) No. 30, Revenue Region No. 6, through Elenita P. Nuguid, Chief of the Collection Service.

On March 13, 2013, petitioner filed the instant Petition for Review[8].

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[1] Exhibit "P-25".
[2] Exhibits "R-1" and R-2".
[3] Exhibit "R-9".
[4] Exhibits "R-19" and "R-19-a".
[5] Exhibit "R-17".
[6] Exhibit "R-18".
[7] Exhibit "P-23' and Exhibit "R-21".
[8] Docket, pp. 7-21.

In his Answer[9] filed on April 24, 2013, respondent states that contrary to petitioner's claim, it received the Notice of Informal Conference, PAN and FAN, hence, it was not denied the mandatory due process requirements as shown in the record of the case. In fact, petitioner attended several conferences with authorized BIR officials and employees and even protested the subject assessment prior to the issuance of the FAN.

Petitioner's assertion that the FAN is void as it did not indicate the factual and legal bases of the assessment as required under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended and Revenue Regulations (RR) No. 12-99, is also erroneous since computations, schedules and applicable laws were included in the FAN. The several correspondences submitted by petitioner questioning the basis of the deficiency tax assessment also strengthen the fact that it was properly informed of the factual and legal bases of the assessment.

It is as well flawed for petitioner to state that the subject assessment was based on mere assumptions as audit investigations was conducted pursuant to Letter of Authority No. 030-AS-06-00-00029 which became the basis of the subject assessment.

Finally, respondent invokes the tenet that tax assessments are presumed correct and made in good faith and the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but also that the taxpayer is right.

After a Pre-Trial Order[10] was issued, petitioner presented its lone witness, **Gilbert C. Yu**[11] who testified that as petitioner's Managing Partner, he helps find clients for petitioner, ensures that petitioner's building designs are in accordance with the Building Code and that the contractor follows the building designs in the construction of the building. He also makes sure that the interests of

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[9] *Ibid.*, pp. 53-54.
[10] *Ibid.*, pp. 646-653.
[11] Judicial Affidavit of Arch. Gilbert C. Yu, Exhibit "P-24".

petitioner's clients are protected and that they have access to all the documents relating to the projects.

He further testified that petitioner is a partnership registered with the Securities and Exchange Commission (SEC) and with BIR RDO No. 30 of Revenue Region No. 6[12]. It is engaged in providing professional architectural services to clients, such as designing houses, offices and/or buildings. Its principal office is located at Rm. 727 Downtown Center Building, 516 Quintin Paredes Street, Binondo[13].

In 2006, petitioner was engaged as a Project Manager in the construction of several condominium projects, by acting directly as an architect for and in behalf of the individual clients. Petitioner however, did not finance the purchase of the lots upon which the said condominium projects were constructed nor the construction of the condominium projects.

As Project Manager, petitioner coordinated between unit owners, the general contractors and other suppliers of goods and services. Basically, it provided guidance to clients with respect to choosing the right contractor and supplier of goods and services for the building of their condominium units and ensured that the construction was in accordance with the architectural design.

In connection with the foregoing, the unit owners executed a Contract to Manage and Execute (Contract to Manage) the Construction of Grand Hamptons Tower I Condominium, Grand Hamptons Tower II Condominium and Kensington Place Condominium[14], while petitioner executed a Trust Agreement embodied in the Contract to Manage. Each unit owner executed a separate Depository and Disbursing Agreement with Banco de Oro – Trust Banking Group (BDO)[15]. For the purchase of the lands upon which the condominium units were constructed, Deeds of Absolute Sale[16] were executed between Fort Bonifacio Development

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[12] Exhibit "P-2".
[13] Exhibit "P-1".
[14] Exhibits "P-5" to "P-5-B", "P-9" to "P-9-B" and "P-13".
[15] Exhibits "P-3" to "P-3-B".
[16] Exhibits "P-4", "P-8" and "P-12".

Corporation (FBDC) and Grand Hamptons Tower II Condominium (Condominium Corporation), whereby ownership over the lands was transferred directly from FBDC to the Condominium Corporation, as evidenced by the respective Transfer Certificates of Title[17]. From the Condominium Corporation, individual Condominium Certificates of Title[18] were issued to the unit owners.

In relation to its role of providing architectural services to its clients for the Condominium Projects, petitioner sought guidance from the BIR disclosing to it the factual background of its responsibilities in such projects. The BIR issued several rulings[19] that it would not be subject to tax as a real estate developer for providing architectural services to its clients. In particular, the BIR ruled that the transactions were not subject to capital gains tax (CGT), creditable withholding tax (CWT), IT or VAT, but petitioner must pay Documentary Stamp Tax (DST) on the certificates in the amount of fifteen pesos. Subsequently however, the said BIR Rulings were revoked in BIR Revenue Memorandum Circular (RMC) No. 55-2010[20] without according petitioner the opportunity to be heard. Petitioner likewise requested for a confirmation of its exemption from IT and WT as a general professional partnership through BIR Ruling DA-(C-014) 070-10[21].

The witness confirmed that petitioner received a Final Notice Before Seizure dated February 8, 2013[22] stating that the tax deficiency assessment issued by the BIR against petitioner should be settled within ten (10) days after receipt, otherwise, the BIR would make a collection through summary garnishment and/or simultaneous court action.

He added that he was petitioner's Managing Partner since its establishment and was aware of the subject FAN issued by the BIR for petitioner's alleged deficiency tax for 2006. He clarified however that the purchases which respondent claimed under-declared pertained to purchases of petitioner's clients and not on its account.

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[17] Exhibits "P-6", "P-7", "P-10", "P-11", "P-14", "P-15".
[18] Exhibits "P-16" to "P-16-F".
[19] Exhibits "P-17" to "P-20".
[20] Exhibit "P-21".
[21] Exhibit "P-22".
[22] Exhibit "P-23".

He explained that as Project Manager, petitioner's sole responsibility is to look for a property in behalf of its clients. For service rendered, it received Architectural Fee as compensation. Petitioner executed a disbursement agreement with its clients providing that the latter would deposit money in a trustee account from which all the money needed for payment to the suppliers would be disbursed. Precisely the deed of absolute sale was executed between petitioner's clients and the seller of the property. Petitioner started the projects in 2003, hence, the subject assessments might pertain to petitioner's third project, which started in 2006.

The witness admitted that petitioner received the Final Notice Before Seizure but not the FAN for which reason it was not able to file a protest letter.

Respondent, for his part, presented Revenue Officers Ronaldo DP. Martirez, Reino B. De Guia and Ruth L. Urbi, as witnesses.

RO **Ronaldo DP. Martirez,** assigned at Revenue District No. 32, Revenue Region No. 6-Manila, declared in his Amended Judicial Affidavit[23] that he was tasked to continue the audit of petitioner's 2006 case docket by virtue of a Memorandum dated July 21, 2009[24] issued by the Letter Notice Task Force of the BIR due to the findings of discrepancies in petitioner's tax returns for taxable year 2006 after the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching - Bureau of Customs (TPM-BOC) Data Program, as reflected in the Letter Notice (LN) No. 030-AS-00-00029 dated October 30, 2007[25], issued by the BIR and received by petitioner.

His audit investigation revealed that petitioner failed to submit any document to explain the discrepancies indicated in the LN. On this account, he recommended the issuance of a Letter of Authority (LOA) through a Memorandum dated July 31, 2009[26] addressed to the Deputy Commissioner-Operations Group of the BIR. Consequently, LOA No. 2008-

[23] Exhibits "R-22" and "R-22-a".
[24] Exhibit "R-4".
[25] Exhibit "R-2".
[26] Exhibit "R-11".

00044576[27] was issued and served to petitioner together with the Notice of Informal Conference[28] both dated August 27, 2009.

After the investigation, audit reports dated October 22, 2009[29] were issued, reflecting petitioner's deficiency IT and VAT for taxable year 2006 amounting to ₱239,318,129.07 and ₱83,834,940.50, respectively,

Thus, petitioner was informed of its deficiency tax liabilities through the PAN[30], FAN[31] and Assessment Notice Nos. F-030-LNTF-06-IT-033[32] and 030-LNTF-06-VT-033[33] issued by the BIR. Notwithstanding receipt, petitioner failed to file any protest on the tax assessments which became final and demandable. For this reason, 1st Notice dated January 2, 2013[34] and Final Notice Before Seizure dated February 8, 2013[35] were sent to petitioner demanding payment of its deficiency tax assessments.

Witness Martirez, reiterated that the discrepancies in petitioner's tax returns were discovered after the reconciliation of listing for enforcement and third party matching. To verify the third-party information, he informed petitioner's former counsel of the discrepancy and even had a meeting with Mr. Yu. Petitioner submitted the official receipt issued to it by FBDC, the Contract to Sell between it and FBDC and the check payments for the 3 lots purchased from the latter. He gave petitioner's representative copies of all the assessment notices and letters, including the final notice but he did not have proof of the receipt. Petitioner did not file a protest but it submitted the requirements indicated in the LN. It also did not show the source of its funding nor reveal the owners of the 3 condominium buildings it allegedly purchased from FBDC.

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[27] Exhibit "R-9".
[28] Exhibit "R-8".
[29] Exhibits "R-12" and "R-13".
[30] Exhibit "R-16".
[31] Exhibits "R-19" and "R-19-a".
[32] Exhibit "R-17".
[33] Exhibit "R-18".
[34] Exhibit "R-20".
[35] Exhibit "R-21".

Respondent's second witness, **Reino B. De Guia** testified[36] that as BIR's Administrative Assistant, he personally mailed the PAN issued to petitioner for taxable year 2006 pursuant to the Job Order[37] request of the LN Task Force. He sent the PAN through registered mail under Registry Receipt No. 1070-R by depositing the copies of the PAN at the BIR post Office, in a sealed envelope addressed to petitioner's registered address at Rm. 727 Downtown Center Building, 516 Quintin Paredes St., Binondo, Manila, with instruction to the postmaster to return the mail to the sender after ten days if undelivered, as evidenced by Transmittal Letter dated July 28, 2010[38].

RO I **Ruth I. Urbi** declared[39] that she is currently assigned at the Secretariat, Letter Notice Task Force of the BIR. She prepared the Job Order for the mailing of the PAN to petitioner, and the one who sent the Assessment Notices and FAN to petitioner for taxable year 2006 through registered mail under Registry Receipt No. 2903. She deposited the copies of the said Assessment Notices at the BIR Post Office, in a sealed envelope, addressed to petitioner's registered address at Rm. 727 Downtown Center Building, 516 Quintin Paredes St., Binondo, Manila with the instruction to the postmaster to return the mail to the sender after ten days if undelivered. Petitioner received the PAN and FAN as shown in the Registry Return Cards[40] which were returned to her office.

RO Urbi confirmed that the BIR issued petitioner a PAN, assessment notices and a FAN on different dates. She reiterated that she prepared the Job Order for the mailing of the PAN and she personally deposited to the BIR Post Office the assessment notices and the FAN on September 2, 2010, as evidenced by the registry return receipt.

On March 18, 2014, respondent filed a Motion to Dismiss[41] as the Court had no jurisdiction over the subject matter of the case, to which petitioner filed an Opposition on

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[36] See Judicial Affidavit of Reino B. De Guia, Exhibits "R-25" and "R-25-a".
[37] Exhibit "R-23".
[38] Exhibits "R-24" and "R-24-a".
[39] See Judicial Affidavit of Ruth I. Urbi, Exhibits "R-28" and "R-28-a".
[40] Exhibits "R-26", "R-26-a", "R-27" and "R-27-a".
[41] Docket, pp. 1043 to 1049

April 2, 2014.[42] However, it was denied for lack of merit on May 20, 2014.[43]

After the filing of the Memorandum for the Petitioner[44] on January 5, 2015 and for respondent, on October 9, 2015, the case was deemed submitted for decision on November 13, 2015.[45]

THE ISSUES

The parties submitted the following issues[46] for the Court's determination, to wit:

1. Whether the Court has jurisdiction to entertain the instant petition;

2. Whether the tax deficiency assessment is null and void for its complete failure to comply with the substantive and procedural requirements of due process; and

3. Whether petitioner is liable for deficiency income tax and VAT for the fiscal year 2006 as seller of certain real estate properties.

THE COURT'S RULING

In the Resolution dated May 20, 2014[47], the Court already ruled that it has jurisdiction to entertain this Petition for Review. Hence, another discussion is superfluous.

On the next issue, petitioner contends that the tax deficiency assessment is null and void due to respondent's complete failure to comply with the substantive and

[42] *Ibid.*, pp. 1057 to 1064
[43] Resolution, docket, pp. 1100 to 1104
[44] Docket, pp. 1251 to 1282.
[45] Resolution, docket, p. 1448.
[46] Par. II, Joint Stipulation of Facts and Issues, docket, p. 623.
[47] Docket, pp. 1100 to 1104.

procedural requirements of due process. Petitioner argues that it did not receive any Notice of Informal Conference, PAN or Formal Letter of Demand prior to its receipt of a Final Notice Before Seizure on March 5, 2013. In fine, it was deprived of due process required under Section 228 of the NIRC of 1997, as amended, and as implemented by RR No. 12-99.

In this regard, respondent insists that petitioner received a Notice of Informal Conference, PAN, Assessment Notices and FAN. In fact, petitioner's representative even attended several conferences with the BIR official and employees and submitted several letters to the BIR questioning the subject assessment prior to the issuance of the FAN.

The Court finds for petitioner.

Article III Section 1 of the Constitution provides that "No person shall be deprived of life, liberty, or property without due process of law . . .".

The law has sufficient remedies to accord the taxpayers the opportunity to contest or dispute the assessment to which the taxpayers are being made liable to pay.[48] Section 228 of the NIRC of 1997, as amended, reads:

> "SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx

[48] BPI Data Systems Corporation (formerly Filipinas Management and Leasing Services, Inc.) v. Commissioner of Internal Revenue, CTA Case No. 4530, January 12, 1994.

> 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.
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> 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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> 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.
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> 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."

Corollarily, Sections 3.1.2 and 3.1.4 of R.R. No. 12-99 mandates the sending of PAN and FAN/FLD by the CIR and the receipt thereof by the taxpayer as part of due process requirement in the issuance of a deficiency tax assessment, to wit:

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or 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, at least by registered mail, 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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3.1.4 Formal Letter of Demand (FLD) and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is

> based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof."

Evidently, when there exists a sufficient basis to assess the taxpayer of deficiency tax, a PAN shall be issued and sent to the taxpayer. The taxpayer has 15 days to make a Reply and to examine the docket and present his arguments in writing. If the taxpayer fails to respond to the PAN, a FLD and Assessment Notice shall be issued and served stating the facts and the law on which the assessment was based. The taxpayer, within 30 days, may file a protest based on such assessment. Thereafter, the taxpayer must submit the relevant supporting documents within 60 days, otherwise the assessment shall become final.

Note that Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99 are couched in obligatory language by using the word "shall".[49] The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[50] Where a statute is mandatory, the Court has no power to distinguish between material and immaterial breach thereof or omission to comply what it requires. What the law decrees must be obeyed against pain of sanction or declaration of nullity of what is done in disregard thereof.[51] Thus, it is crucial that the procedure laid down in the above-quoted provisions of

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[49] CIR v. United Salvage and Towage Philippines, Inc., G.R. No. 197515, July 2, 2014.

[50] Enriquez, et al. v. Enriquez, et al., G.R. No. 139303, August 25, 2005 citing Lacson v. Lacson, G.R. No. L-23482, August 30, 1968.

[51] Seriña v. The Court of First Instance of Bukidnon, Ernesto Villalon, G.R. No. L-28511, August 22, 1968.

law and regulations be strictly enforced by respondent so as to safeguard petitioner's right to procedural due process.

Respondent's witnesses testified that the PAN and FAN were sent through registered mail. BIR's Administrative Assistant Reino B. De Guia stated that he sent the PAN through registered mail.[52] For her part, RO Ruth L. Urbi claimed that she prepared the Job Order for the mailing of the subject PAN and sent the Assessment Notices and FAN through registered mail.[53]

On the other hand, witness Gilbert C. Yu testified that petitioner only received the Final Notice Before Seizure dated February 8, 2013 as notice for its alleged deficiency assessments. Subsequently however, petitioner's representative secured for itself a copy of the FAN in the BIR, RDO No. 30.[54]

It would appear from the foregoing that the PAN, the assessment notices and the FAN were mailed to petitioner via registered mail with Registry Receipt No. 1070-R for the PAN and Registry Receipt No. 2903 for the assessment notices and the FAN. Per respondent witness' testimony, the registry return card was returned to the BIR but she did not have proof of receipt by petitioner or any of its representatives. Significantly, petitioner denied receipt of the said assessments, other than the Final Notice Before Seizure.

Elementary is the rule that a taxpayer must actually receive any assessment issued by the CIR for it to be valid.[55] While the presumption exist that constructive service of an assessment — provided the same is properly addressed with postage prepaid and is actually mailed — is received by the

[52] Exhibits "R-17" and "R-28".
[53] Transcript of Stenographic Notes (TSN) during the hearing held on August 18, 2014, pp. 13-17.
[54] Exhibit "P-30".
[55] CIR v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010, 637 SCRA 633; Barcelon, Roxas Securities, Inc. v. CIR, G.R. No. 157064, August 7, 2006, 498 SCRA 126; Estate of the Late Juliana Diez Vda. De Gabriel v. CIR, G.R. No. 155541, January 27, 2004, 421 SCRA 266; CIR v. United International Pictures AB, CA-G.R. SP No. 73200, June 22, 2006; Pundanera v. CIR, CTA Case No. 8333, December 2, 2014; Palaganas v. CIR, CTA Case No. 8394, September 17, 2014; Coolmate Corporation v. CIR, CTA Case No. 8264, May 19, 2014.

taxpayer in the ordinary course of mail, the same is merely a disputable presumption, which can be directly denied by the taxpayer.[56] In such an instance, the CIR has the burden of proving that the assessment was indeed received by the taxpayer.[57]

The imperative nature of receipt by the taxpayer of the PAN has been ruled on and settled by the Supreme Court in CIR v. Metro Star Superama, Inc.,[58] in this wise:

> 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.
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> From the provision quoted above, it is clear that the sending of a PAN to the 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

[56] CIR v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010, 637 SCRA 633; Barcelon, Roxas Securities, Inc. v. CIR, G.R. No. 157064, August 7, 2006, 498 SCRA 126; CIR v. United International Pictures AB, CA-G.R. SP No. 73200, June 22, 2006; Pundanera v. CIR, CTA Case No. 8333, December 2, 2014; Palaganas v. CIR, CTA Case No. 8394, September 17, 2014; Coolmate Corporation v. CIR, CTA Case No. 8264, May 19, 2014.

[57] CIR v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010, 637 SCRA 633; Barcelon, Roxas Securities, Inc. v. CIR, G.R. No. 157064, August 7, 2006, 498 SCRA 126; CIR v. United International Pictures AB, CA-G.R. SP No. 73200, June 22, 2006; Pundanera v. CIR, CTA Case No. 8333, December 2, 2014; Palaganas v. CIR, CTA Case No. 8394, September 17, 2014; Coolmate Corporation v. CIR, CTA Case No. 8264, May 19, 2014.

[58] G.R. No. 185371, December 8, 2010, 637 SCRA 633.

> 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.

Since petitioner denied receipt of the PAN, the assessment notices and the FAN, the burden lies upon respondent to prove, with substantial evidence, the receipt thereof by petitioner.

The record of the case reveals that respondent failed to present any evidence to establish that petitioner actually received the PAN, the assessment notices and the FAN. While the registry return cards for the assessment notices and the FAN were returned to the BIR, the signatures of the recipients were illegible or unreadable. Aside from the testimony of RO Urbi and the registry return card as evidence, respondent did not submit a certification from the Post Office concerned or the testimony of the postman who delivered the mail to petitioner. Clearly, respondent failed to establish that the signatures appearing in the registry return card belonged to any of petitioner's authorized representative or agent.

In Del Rosario v. Cedillo[59], the Final Arbiter provides that an illegible signature on the registry receipts is insufficient proof that the addressee received the mail matter, *viz*:

> "Similarly, in Ting v. Court of Appeals, the accused was acquitted because the

[59] A.M. No. MTJ-04-1557, October 21, 2004.

prosecution failed to discharge the burden of proving the accused or his duly authorized agent's receipt of the required notice of dishonor. Thus –

> ... the prosecution alleged that the demand letter had been sent by mail. To prove mailing, it presented a copy of the demand letter as well as the registry return receipt. However, no attempt was made to show that the demand letter was indeed sent through registered mail nor was the signature on the registry return receipt authenticated or identified. It cannot even be gleaned from the testimony of private complainant as to who sent the demand letter and when the same was sent. In fact, the prosecution seems to have presumed that the registry return receipt was proof enough that the demand letter was sent through registered mail and that the same was actually received by petitioners or their agents.
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> xxx xxx xxx
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> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.' In the case at bar, no effort was

> made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. There being insufficient proof that petitioners received notice that their checks had been dishonored, the presumption that they knew of the insufficiency of the funds therefor cannot arise."

Applying the foregoing case, the Court finds that no sufficient evidence was presented by respondent to prove actual receipt of the said documents by petitioner.

The act of simply mailing the PAN and FAN to the taxpayer on separate dates is not enough to satisfy the requirements of due process. Receipt by the taxpayer of the PAN and the opportunity to respond thereto within 15-days from receipt thereof are essential parts of the requirements of due process which the CIR cannot simply ignore.

Further, mere allegations that the PAN, FAN and other Assessment Notices were sent to and received by the taxpayer will not suffice. Bare allegations are far from sufficient proof for the Court to rule in respondent's favor. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.[60]

Accordingly, in the absence of proof of actual receipt by petitioner of a PAN, Assessment Notice and FAN, as required

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[60] Real v. Belo, G.R. No. 146224, January 26, 2007.

in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013, petitioner was not accorded procedural due process in the issuance of the Final Notice Before Seizure dated February 8, 2013, which was received by petitioner on March 5, 2013.

Again, Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void.[61]

Further, an invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.[62]

All said, the Final Notice Before Seizure dated February 8, 2013, which petitioner received on March 5, 2013 never became final and demandable as it failed to receive any notices prior to said receipt of the Final Notice Before Seizure dated February 8, 2013. As a consequence, the assessment issued by respondent against petitioner for deficiency IT and VAT in the respective amounts of ₱257,129,633.53 and ₱89,941,757.61 for calendar year 2006, is void for failure to accord petitioner due process in the issuance thereof.

In view of the foregoing conclusion, the Court deems it unnecessary to address the other issues raised by the parties.

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[61] Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. 197515, July 2, 2014.

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

WHEREFORE, the instant Petition for Review filed by G&W Architects, Engineers & Project Consultants, Co., on March 13, 2013, is hereby **GRANTED**. Accordingly, the deficiency income tax and value-added tax assessments issued by respondent Commissioner of Internal Revenue against petitioner G&W Architects, Engineers & Project Consultants, Co., in the respective amounts of ₱257,129,633.53 and ₱89,941,757.61 for calendar year 2006, as well as the Final Notice Before Seizure dated February 8, 2013, are **CANCELLED** and deemed **WITHDRAWN** for being **VOID**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

WHEREFORE, the instant Petition for Review filed by G&W Architects, Engineers & Project Consultants, Co., on March 13, 2013, is hereby **GRANTED**. Accordingly, the deficiency income tax and value-added tax assessments issued by respondent Commissioner of Internal Revenue against petitioner G&W Architects, Engineers & Project Consultants, Co., in the respective amounts of ₱257,129,633.53 and ₱89,941,757.61 for calendar year 2006, as well as the Final Notice Before Seizure dated February 8, 2013, are **CANCELLED** and deemed **WITHDRAWN** for being **VOID**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice