CTA Form No. 8 (For DCC)

24-000173-0031

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA OC NO. 029

REPUBLIC OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

PETROLEUM TECHNOLOGY & RESEARCH CORPORATION,
Defendant.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

HON. ROMEO LUMAGUI JR.
Commissioner of Internal Revenue
BIR National Office Building
Sen. Miriam Defensor-Santiago Ave.
Diliman, Quezon City

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
ATTY. MAUREEN ANNE B. MEDINA
BIR Legal Division Revenue Region 6
5/F, BIR Building I, Solana Street
Intramuros, Manila

KS LAW OFFICE
Block 75, Lot 12, Haring Constantino Street
Lagro Subdivision, Brgy. Greater Lagro
Novaliches, 1118 Quezon City

GREETINGS:

You are hereby notified by these presents that on **June 24, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 24, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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REPUBLIC OF THE PHILIPPINES,
Plaintiff,

- versus -

PETROLEUM TECHNOLOGY & RESEARCH CORPORATION,
Defendant.

CTA OC NO. 029

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

JUN 24 2025 8:20 AM

x - x

RESOLUTION

For the Court's consideration are:

1. defendant's **Demurrer to Evidence**[1] filed personally and via electronic mail on November 27, 2024, with plaintiff's **Opposition to Demurrer to Evidence**[2] filed personally on January 21, 2025 and via electronic mail on January 22, 2025; and,

2. plaintiff's **Motion for Reconsideration with Manifestation (Re: Resolution dated 19 November 2024)**[3] filed personally on December 9, 2024 and via electronic mail on December 10, 2024, with defendant's **Comments/Opposition (to Plaintiff's Motion for Reconsideration)**[4] filed personally and via electronic mail on January 20, 2025.

THE PARTIES

Plaintiff is the Republic of the Philippines, a political entity to whom all citizens and persons deriving income within its territory have

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[1] CTA Docket, pp. 651-674.
[2] CTA Docket, pp. 699-705.
[3] CTA Docket, pp. 679-682.
[4] CTA Docket, pp. 689-693.

the obligation to pay taxes. The power of taxation is exercised by plaintiff through the Bureau of Internal Revenue (BIR). The BIR is represented by the Commissioner of Internal Revenue (CIR) who is empowered to perform the duties of said office including among others, the power to assess and collect all national internal revenue taxes, fees and other charges and to enforce all forfeitures, penalties, and fines connected therewith. The CIR holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

Defendant Petroleum Technology & Research Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines.[6] It is a duly registered taxpayer with Taxpayer Identification No. 000-887-964-000 under Revenue District Office No. 34-Sta. Ana, Manila, which falls under the jurisdiction of Revenue Region No. 6.[7]

THE FACTS

On September 14, 2015, a Letter of Authority (LOA) SN: Ela201200043204 / LOA-034-2015-00000140 was issued authorizing Revenue Officer (RO) Cynthia Corazon Pangilinan and Group Supervisor (GS) Oscar Enrile to examine defendant's books and accounts and other accounting records for TY 2014.[8]

On December 29, 2017, Final Assessment Notices (FAN)[9] and the corresponding Formal Letter of Demand (FLD) with Details of Discrepancies[10] were issued.[11]

On January 29, 2018, BIR Revenue Region No. 6 received defendant's Protest to the FLD dated January 25, 2018.[12]

On April 23, 2018, BIR Revenue Region No. 6 Regional Director Romulo L. Aguila, Jr. issued a letter addressed to defendant, informing the latter that the entire docket of the case together with defendant's letters shall be returned to Revenue District Officer, RDO No. 034 Paco – Pandacan – Sta. Ana – San Andres, Manila for reinvestigation.[13]

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[5] Par. 2, Joint Stipulation of Facts and Issues (JSFI), CTA Docket, pp. 572-573.
[6] Par. 3, JSFI, CTA Docket, p. 573.
[7] Par. 4, JSFI, CTA Docket, p. 573.
[8] Par. 8, Complaint, CTA Docket, p. 7; Par. 3, Answer, CTA Docket, p. 77.
[9] Exhibits "P-2", "P-2-A", and "P-2-B", CTA Docket, pp. 62-64.
[10] Exhibit "P-3", CTA Docket, pp. 65-67.
[11] Par. 12, Complaint, CTA Docket, p. 8.
[12] Exhibit "P-4, CTA Docket, pp. 68-69; Par. 13, Complaint, CTA Docket, p. 8.
[13] Exhibit "P-5", CTA Docket, p. 70; Par. 14, Complaint, CTA Docket, p. 8.

Thereafter, on July 18, 2019, BIR Revenue Region No. 6 Regional Director Jethro M. Sabariaga issued a letter addressed to the President of defendant informing the latter that the request for reinvestigation had been granted, but nevertheless, defendant's failure to submit and/or present relevant documents within the prescribed period made the assessment final and executory.[14]

On August 15, 2019, a Memorandum of Assignment was issued by Mr. Enrique Remigio Z. Gatchalian directing "S.A. Imelda Cregencia and "G.S. Aileen Sarreal" to conduct collection and enforcement strategies in relation to the present case.[15]

On October 10, 2019, defendant received the Warrant of Distraint and/Levy (WDL) dated October 9, 2019 for the garnishment of its bank accounts.[16]

On April 4, 2024, plaintiff filed a Complaint[17] for collection of deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) for taxable year (TY) 2014 in the amounts of ₱58,070,933.18, ₱39,273,711.99 and ₱32,074.12, respectively, inclusive of surcharges and interests.

On May 20, 2024, defendant filed its Answer,[18] raising therein the following special and affirmative defenses:

1. the LOA was not properly served to defendant;

2. the tax deficiency assessment is void as the Preliminary Assessment Notice (PAN), the Formal Letter of Demand (FLD) and Assessment Notice were not properly served to defendant;

3. the tax deficiency assessment is void as the PAN is non-compliant with Revenue Regulations (RR) No. 12-99 and in violation of defendant's right to substantive due process;

4. the tax deficiency assessment is void as the FLD and FAN are non-compliant with RR No. 12-99, as amended by RR No. 18-2013, and Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended;

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[14] Exhibit "P-6", CTA Docket, p. 71; Par. 15, Complaint, CTA Docket, p. 8.
[15] Exhibit "P-1", CTA Docket, p. 61; Par. 17, Complaint, CTA Docket, p. 9.
[16] Exhibit "P-7", CTA Docket, p. 72; JSFI, CTA Docket, p. 573.
[17] CTA Docket, pp. 5-13.
[18] CTA Docket, pp. 76-104.

5. the FLD does not purport to be a demand for payment of tax due which is contrary to existing jurisprudence;

6. the WDL is invalid as it is rooted in a void assessment; and,

7. even assuming without admitting that the CIR can collect the taxes due from defendant, the period to collect had already prescribed.

Acting on the Court's directive to the parties to file their Pre-Trial Briefs, Defendant's Pre-Trial Brief[19] was filed on July 15, 2024 while Plaintiff's Pre-Trial Brief[20] was filed on July 26, 2024.

During the Pre-Trial Conference, the Court directed the parties to confer with each other to formulate a Summary of Admissions and Stipulations of Facts to be incorporated in a Joint Stipulation of Facts and Issues (JSFI) shall be submitted until August 22, 2024.[21]

On August 12, 2024, the parties filed their JSFI[22] which was approved by the Court in the Resolution dated August 21, 2024,[23] thereby terminating the Pre-Trial.

On October 2, 2024, the Court issued the Pre-Trial Order.[24]

During plaintiff's presentation of evidence, plaintiff's counsel presented its sole witness, RO Imelda O. Cregencia.[25]

On October 3, 2024, plaintiff filed its Formal Offer of Evidence.[26] On October 10, 2024, defendant filed its Comments/Objections (to Plaintiff's Formal Offer of Evidence.[27] Acting on plaintiff's Formal Offer of Evidence, the Court issued a Resolution dated November 19, 2024,[28] which, among others, admitted all the offered exhibits, except Exhibits "P-2-A" and "P-2-B" for failure of the documents being offered to correspond to the marked documents.

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[19] CTA Docket, pp. 537-546.
[20] CTA Docket, pp. 550-555.
[21] Order, CTA Docket, pp. 563-565.
[22] CTA Docket, pp. 572-578.
[23] CTA Docket, p. 582.
[24] CTA Docket, pp. 603-619.
[25] Order, CTA Docket, pp. 621-622.
[26] CTA Docket, pp. 627-633.
[27] CTA Docket, pp. 635-641.
[28] CTA Docket, pp. 649-650.

On November 27, 2024, plaintiff filed a Demurrer to Evidence,[29] praying for the Court to render judgment:

1. declaring the tax deficiency assessments for IT, VAT, and EWT null and void;

2. declaring the WDL void;

3. declaring the twelve (12) Warrants of Garnishment (WOG) void;

4. ordering the dismissal of the Complaint against defendant; and,

5. issue an order lifting the WDL and 12 WOGs against the properties of defendant.

In support of its prayer, defendant claims that plaintiff has not sufficiently shown that defendant is liable for the assessed amounts. Specifically, it argues that:

1. there are no LOA and PAN validly issued to defendant;

2. the FLD/FAN were not properly served to defendant;

3. the FLD/FAN were not compliant with Section 3.1.3 of RR No. 12-99, specifically that the FLD is not a demand; and,

4. the WDL is void.

Moreover, defendant claims that the period to assess and the period to collect for TY 2014 had already prescribed.

On January 21, 2025, plaintiff filed its Opposition to Demurrer to Evidence[30] arguing that:

1. the existence of the LOA and the PAN has been admitted by defendant;

2. there was no violation of due process in the service of deficiency tax assessment notices;

3. the FLD/FAN are compliant with pertinent rules;

[29] CTA Docket, pp. 651-674.
[30] CTA Docket, pp. 699-705.

4. the WDL stands and should be maintained; and,

5. the period to assess and period to collect have not yet prescribed.

Meanwhile, on December 9, 2024, plaintiff filed a Motion for Reconsideration with Manifestation (Re: Resolution dated 19 November 2024)[31] praying for the Court to reconsider the denial, and thus, admit Exhibits "P-2-A" and "P-2-B". According to plaintiff, the exhibits originally marked during Commissioner's Hearring are Assessment Notice No. 34-14-VT-17-285 and Assessment Notice No. 34-14-WE-17-286 but were both inadvertently formally offered as Assessment Notice No. 34-14-VT-17-284. Plaintiff also manifests that while the date provided in its Exhibit "P-4" pertaining to its Protest to the FLD is indeed 25 January 2019, all the receiving stamps from the BIR indicate that the same was received in the year 2018.

On January 20, 2025, defendant filed its Comments/Opposition (To Plaintiff's Motion for Reconsideration).[32] Defendant strongly opposes the admission of Assessment Notice No. 34-14-VT-17-285 and Assessment Notice No. 34-14-WE-17-286 as belatedly admitting them violates its right to due process.

On January 31, 2025, the Court issued a Minute Resolution[33] resolving, among others, to submit for resolution both defendant's Demurrer to Evidence and plaintiff's Motion for Reconsideration with Manifestation. Hence, this Resolution.

THE COURT'S RULING

For the orderly and proper disposition of this case, the Court shall first resolve plaintiff's Motion for Reconsideration with Manifestation and thereafter resolve defendant's Demurrer to Evidence.

Plaintiff's Motion for Reconsideration with Manifestation

To recall, the Court denied the admission of Exhibits "P-2-A" and "P-2-B" for failure of the documents being offered to correspond to the marked documents. Plaintiff now requests for the Court to reconsider the same.

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[31] CTA Docket, pp. 679-682.
[32] CTA Docket, pp. 689-693.
[33] CTA Docket, p. 707.

Section 8 of Republic Act (RA) No. 1125 categorically states that proceedings before the CTA are not strictly governed by the technical rules of evidence, to wit:

> Sec. 8. *Court of record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but **such proceedings shall not be governed strictly by technical rules of evidence**. *(Boldfacing supplied)*

In *BPI-Family Savings Bank, Inc. vs. Court of Appeals,*[34] the Supreme Court stressed this rule and that the paramount consideration remains the ascertainment of truth, *viz.*:

> True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides **that proceedings before it "shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth.** Verily, the quest for orderly presentation of issues is not absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.
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> xxx xxx xxx
>
> It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. Xxx.

Over the objection of defendant, the Court finds that admission of Exhibits "P-2-A" and "P-2-B" is proper in the interest of justice, subject to the Court's final evaluation and/or appreciation of their probative value.

Defendant's Demurrer to Evidence

Before delving into the merits of the Demurrer to Evidence, it is incumbent upon the Court to first ascertain whether it has jurisdiction over the present case.

[34] G.R. No. 122480, April 12, 2000.

The exclusive original jurisdiction over tax collection cases of the Court of Tax Appeals (CTA) is anchored on Section 7(c)(1) of RA No. 1125, as amended by RA No. 9282, to wit:

> Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> xxx xxx xxx
>
> c. Jurisdiction over tax collection cases as herein provided:
>
> 1. Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: Provided, however, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

Relatedly, Section 3(c)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals provides that the CTA in Division has exclusive original jurisdiction over tax collection cases when the principal amount of taxes and fees, exclusive of charges and penalties is at least ₱1,000,000.00.

In this case, plaintiff seeks to collect from defendant basic deficiency IT, VAT, and EWT for TY 2014 amounting to ₱37,682,534.25, ₱24,769,803.24, and ₱20,158.42, respectively.

Undoubtedly, the Court has jurisdiction over the present tax collection case.

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case.[35]

Demurrer to evidence is governed by Section 1, Rule 33 of the 2019 Amendments to the Rules of Civil Procedure, which reads:

> Section 1. *Demurrer to evidence.* – After the plaintiff has completed the presentation of his or her evidence, the defendant may move for dismissal on the ground that upon the facts and the law the

[35] *Nenita Gonzales vs. Mariano Bugaay*, G.R. No. 173008, February 22, 2012, citing *Celino vs. Heirs of Alejo and Teresa Santiago*, G.R. No. 161817, July 30, 2004.

> plaintiff has shown no right to relief. If his or her motion is denied, he or she shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed, he or she shall be deemed to have waived the right to present evidence.

In *Republic of the Philippines vs. Fe Roa Gimenez and Ignacio B. Gimenez*,[36] the Supreme Court laid down the guidelines in resolving a demurrer to evidence, to wit:

> This court has laid down the guidelines in resolving a demurrer to evidence:
>
> > **A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief.** Where the plaintiff's evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery.
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> Furthermore, this court already clarified what the trial court determines when acting on a motion to dismiss based on demurrer to evidence:
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> > **What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief based on the facts and the law.** The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue. *(Boldfacing supplied)*

Based on the foregoing, a demurrer to evidence should be granted when, even assuming all of plaintiff's evidence and reasonable inferences therefrom to be true, it still fails to establish a right to relief.

Upon due consideration of the evidence presented by the plaintiff, the Court finds merit in defendant's Demurrer to Evidence. Accordingly, the present Complaint for collection must be dismissed on the ground that the assessments upon which the present action is predicated, are intrinsically void, as hereinafter discussed.

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[36] G.R. No. 174673, January 11, 2016.

Section 205 of NIRC of 1997, as amended, lays down the remedies of the government for the collection of delinquent taxes, *viz.*:

> **SEC. 205. *Remedies for the Collection of Delinquent Taxes*.** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> > (a) **By distraint** of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and **by levy** upon real property and interest in rights to real property; and
> >
> > **(b) By civil or criminal action.**
>
> xxx xxx xxx

The present case is a civil action, specifically, a complaint for the collection of deficiency taxes. **It is premised on a final, executory and demandable assessment issued by the CIR**. Ordinarily, the CTA would have no jurisdiction to look into the validity of a final, executory and demandable assessment. Jurisprudence, however, clarifies that in case of a void assessment, as in this case, the same may be challenged directly or collaterally.

In *Commissioner of Internal Revenue vs. Alvez*,[37] the Supreme Court ruled that the CTA *En Banc* correctly affirmed[38] the Court in Division's decision,[39] denying the collection case filed by the CIR against the taxpayer therein upon a **finding that the supposed final, executory and demandable assessment sought to be collected by the CIR was void, being a result of an unauthorized assessment conducted by a Revenue Officer without the requisite Letter of Authority**. The Supreme Court explained:

> The Court resolves to DENY the instant Petition for Review on *Certiorari* (Petition) dated July 26, 2021 filed by Petitioner Commissioner of Internal Revenue (CIR), which assails the Decision

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[37] G.R. No. 256743, November 25, 2024 (Notice of Resolution).

[38] *Commissioner of Internal Revenue vs. Alvez*, CTA EB No. 2076, October 8, 2020, penned by Associate Justice Maria Rowena Modesto-San Pedro and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban. Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Catherine T. Manahan dissented; *Commissioner of Internal Revenue vs. Alvez,* CTA EB No. 2076, June 8, 2021, penned by Associate Justice Maria Rowena Modesto-San Pedro and concurred in by Presiding Justice Roman G. Del Rosari and Associate Justices, Erlinda P. Uy, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan. Associate Justices Jean Marie A. Bacorro-Villena and Juanito C. Castañeda, Jr. dissented.

[39] *Commissioner of Internal Revenue vs. Alvez*, CTA OC No. 020, Decision dated November 8, 2018 and Resolution dated May 17, 2019, penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Erlinda P. Uy and Cielito M. Mindaro-Grulla.

> dated October 8, 2020 and the Resolution dated June 8, 2021 of the court of Tax Appeals (CTA) *En Banc* in CTA EB No. 2076. The CTA *En Banc* correctly affirmed the Decision dated November 8, 2018 and the Resolution dated May 17, 2019 of the CTA Special First Division in CTA OC No. 020, which denied the collection case that was filed by the CIR against Neil Ryan Erasmo Alvez (respondent) for deficiency income tax, value added tax, and expanded withholding tax for the taxable year 2009.
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> Time and again, the Court has held that a void judgment or order can never attain finality. In *Gomez v. Concepcion*, the Court explained that:
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>> ... [a] void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void.
>
> In *Mercury Drug Corp. v. Spouses Huang*, the Court held that **a void judgement may be directly or collateral[l]y attacked**, *viz.*:
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>> A void judgment never acquires the status of a final and executory judgment. Parties may, therefore, challenge them without running afoul of the doctrine of immutability of judgment. A direct attack may be brought either through a petition for annulment of judgment under Rule 47 of the Rules of Court or through a petition for certiorari under Rule 65 of the Rules of Court. A void judgment may also be challenged collaterally "by assailing its validity in another action where its is invoked."
>
> **Void assessments are no different. After all, a tax assessment is in the nature of a judgment. It "contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. Akin to a judgment, due process requires that tax assessments must also be served on and received by the taxpayer, to enable him or her to determine the remedies available.**
>
> Accordingly, **the CTA *En Banc* correctly ruled that** even if no protest was timely filed by respondent, **a void assessment**, like void judgments, **can never ripen into finality and, consequently, may be collaterally challenged in the subsequently ensuing collection case**.xxx (Boldfacing supplied)

Evidently, for the BIR to successfully pursue the collection of taxes through any of the available legal remedies outlined above, it is imperative that such "**tax collection must be preceded by a valid assessment** to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence."[40]

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[40] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

Relatedly, Section 228 of the NIRC of 1997, as amended, provides the procedure and manner in which tax deficiency assessments should be issued and protested, *viz.*:

> **SEC. 228.** ***Protesting of Assessment.*** **— When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. **If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.** (*Boldfacing supplied*)

Corollary thereto, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, implements the afore-quoted provision and sets forth the due process requirement in the issuance of tax assessments, *viz.*:

> **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:
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> **3.1.1** ***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. It shall show 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from

filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN)*. — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void (see illustration in ANNEX "B" hereof).

xxx xxx xxx

3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position, and signature of the witnesses.

"*Disinterested witnesses*" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. **The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket**.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer. (*Boldfacing supplied*)

Based on the afore-quoted provisions, if there exists sufficient basis to assess the taxpayer, the CIR or his authorized representative is mandated to issue a PAN. The taxpayer is granted a period of fifteen (15) days from receipt of the PAN to reply thereto. If the taxpayer opts not to respond or if the taxpayer's reply is rejected, an FLD and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein. **Thus, it is essential for plaintiff to establish and prove that the requisite assessment notices were duly served to the taxpayer within the prescriptive period**.

Moreover, under the same RR, service by mail shall be effected through (1) registered mail; (2) a reputable professional courier service; or (3) ordinary mail, in cases where no registry or reputable courier is available in the taxpayer's locality. In order to prove service by registered mail, the registry receipt issued by the post office, containing sufficiently identifiable details of the transaction, must be submitted and attached to the case docket.

It bears emphasis, however, that mere service is not sufficient; actual receipt by the taxpayer must likewise be established. In *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*,[41] the Supreme Court affirmed the ruling of the CTA *En Banc* that the mere presentation of registry receipts is insufficient to prove the taxpayer's receipt of the pertinent notices, *viz.*:

> **As ruled by the CTA *En Banc*, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN.** It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.
>
> xxx xxx xxx
>
> **The Court sees no reason to set aside the findings of the CTA *En Banc*.** xxx.
>
> xxx xxx xxx
>
> Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. **As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance**, the CIR's argument necessarily fails. *(Boldfacing supplied)*

In the present case, plaintiff asserts that the PAN and the FLD/FAN were served to defendant *via* registered mail. Specifically, in its Complaint, plaintiff alleged the following with respect to the service of the PAN, and the FLD/FAN via registered mail:

> 11. Thereafter, **Preliminary Assessment Notice (PAN) dated 10 October 2017, was issued by the BIR and served** upon PETROLEUM TECHNOLOGY & RESEARCH CORPORATION **through registered mail** on 10 October 2017. *Certified true copy of the said PAN is hereto attached as Annexes "F", and forms an integral part hereof;*
>
> 12. Subsequently, **Final Assessment Notices (FAN)** for deficiency income tax, value-added tax and expanded withholding tax for taxable year 2014, and the corresponding **Formal Letter of Demand with Details of Discrepancies were issued** 29 December 2017 and **served**

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[41] G.R. No. 240729, August 24, 2020.

> to PETROLEUM TECHNOLOGY & RESEARCH CORPORATION, **through registered mail** on 29 December 2017; *Certified true copies of the said FAN and FLD with Details of Discrepancies are hereto attached as Annexes "G", "G-1", "G-2", "H", and "H-1", and forms an integral part hereof;*[42] *(Boldfacing supplied)*

In *Estate of the Late Juliana Diez Vda. de Gabriel vs. Commissioner of Internal Revenue*,[43] the Supreme Court ruled that due process requires that the assessment must be **served on and received** by the taxpayer, *viz.*:

> [D]ue process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. **To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.** (*Boldfacing supplied*)

Thus, it is not simply a question of whether the PAN and FAN/FLD were sent to defendant by plaintiff, but it is imperative that the taxpayer actually received these assessment notices.

Upon examination of plaintiff's evidence, it is clear that plaintiff miserably failed to prove that defendant actually received the assessment notices.

In support of its case, plaintiff offered the following evidence in its Formal Offer of Evidence:

Exhibit	Nature	Purpose
Exhibit "P-1"	Memorandum of Assignment (AMT-MOA-U2-2019-3197) dated 15 August 2019, CTA Docket, p. 61	To prove that a Memorandum of Assignment was issued to Seizure Agent (SA) Imelda Cregencia and Supervisor (GS) Group Aileen Sarreal Directing them to conduct collection and enforcement strategies in accordance with par. III, Sec. C of Operations Memorandum No.13-001 dated 12 March 2013, and to prepare and serve/mail the Warrant of Distraint and/or Levy and Warrant of Garnishment, among others.

[42] Complaint, CTA Docket, p. 8.
[43] G.R. No. 155541, January 27, 2004.

Exhibit "P-2"	Assessment Notice No. 34-14-IT-17-284 dated 29 December 2017, CTA Docket, p.62	To prove that an Assessment Notice for the payment of deficiency Income Tax for taxable year 2014 was issued to Petroleum Technology & Research Corporation. To prove the factual and legal bases of the deficiency tax assessment.
Exhibit "P-2-A"	Assessment Notice No. 34-14-VT-17-284 dated 29 December 2017, CTA Docket, p.63	To prove that an Assessment Notice for the payment of deficiency Value-Added Tax for taxable year 2014 was issued to Petroleum Technology & Research Corporation. To prove the factual and legal bases of the deficiency tax assessment.
Exhibit "P-2-B"	Assessment Notice No. 34-14-VT-17-284 dated 29 December 2017, CTA Docket, p.64	To prove that an Assessment Notice for the payment of deficiency Value-Added Tax for taxable year 2014 was issued to and served to Petroleum Technology & Research Corporation. To prove the factual and legal bases of the deficiency tax assessment.
Exhibit "P-3"	Formal Letter of Demand dated 29 December 2017, CTA Docket, p. 65	To prove that a Formal Letter of Demand was issued to and served to Petroleum Technology & Research Corporation requesting payment of deficiency taxes for taxable year 2014.
Exhibit "P-3-A"	Details of Discrepancies Dated 29 December 2017, CTA Docket, p. 67	To prove the factual and legal bases of the deficiency tax assessment.
Exhibit "P-4"	Protest Letter dated 25 January which 2018 was received on 29 January 2018, CTA Docket, p. 68	To prove that Petroleum Technology & Research Corporation filed a Protest Letter to the Assessment Notice/ Formal Letter of Demand (FLD) dated 29 December 2017. To prove that Petroleum Technology & Research Corporation duly received the Assessment Notice/ FLD with Details of Discrepancies dated 29 December 2017.
Exhibit "P-5"	BIR Letter dated 23 April 2018, CTA Docket, p. 70	To prove that the Regional Director of Revenue Region No. 6 BIR Manila sent a letter to Petroleum Technology & Research Corporation in response to their Protest Letter dated 25 January 2018 informing the same that the entire docket shall be returned to Revenue District Office No. 34 for re-investigation. To prove that the period to collect the deficiency taxes has not yet prescribed.
Exhibit "P-6"	BIR Letter dated 18 July 2019. CTA Docket, p. 71	To prove that the Regional Director of Revenue Region No. 6 BIR Manila sent a letter to Petroleum Technology & Research Corporation informing the same that their request for re-investigation has been granted. However, their failure to submit and/or present relevant documents to refute the validity of BIR's findings within the prescribed

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		period resulted in the assessment being final and executory.
Exhibit "P-7"	Warrant of Distraint and/or Levy, CTA Docket, p.72	To prove that a Warrant of Distraint and/or Levy was issued to and served upon Petroleum Technology & Research Corporation.
Exhibit "P-13"	Judicial Affidavit of Imelda O. Cregencia, Revenue Officer, dated 01 April 2024.	To prove that RO Imelda O Cregencia executed a judicial affidavit which served as her direct testimony in the instant case.
Exhibit "P-13-A"	Name and signature of Imelda O. Cregencia, Revenue Officer.	To prove the due execution of the judicial affidavit.

In summary, plaintiff offered only the following documents: (1) Memorandum of Assignment directing the concerned Revenue Officer to proceed with the collection; (2) FAN; (3) FLD; (4) Protest-letter; (5) two (2) letters by the BIR addressed to defendant; (5) WDL; and (6) the Judicial Affidavit of its sole witness.

Notably, the LOA and the PAN (albeit attached as Annexes to the Complaint) and the proof of mailing of the notices and actual receipt thereof were not offered in evidence. The omission of such critical pieces of evidence casts serious doubt on the CIR's compliance with the requirements of due process in the conduct of examination of defendant, specifically on the service of the notices. The noticeable insufficiency of the evidence formally offered by plaintiff in support of its case reinforces this Court's finding that plaintiff, through its sketchy evidence, failed to establish a *prima facie* case as to the validity of the assessment, which is an essential pre-requisite in proving plaintiff's entitlement to the relief sought.

Moreover, the testimony of plaintiff's sole witness RO Cregencia is devoid of any assertion that the assessment notices were actually served upon and received by defendant. This is understandable as said witness is a revenue officer assigned in the Collection Division of BIR Revenue Region No. 6, and not to the Assessment Division which conducted the actual assessment.[44]

Having had no participation in the conduct of said assessment, the witness lacks personal knowledge as to the service of the notices upon defendant. In fact, during her cross-examination, she admitted

[44] Judicial Affidavit of RO Cregencia, Docket, pp. 56-57.

her lack of personal knowledge as to the tax assessment conducted, to wit:

> ATTY. KAREN G. SUPAPO:
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> Q. Good morning, Ms. Witness. In your answer to Question No. 5, that you are a collection officer of the BIR, will you agree with me, **Ms. Witness, you do not have personal knowledge as to what have happened during the tax assessment conducted by the bureau through its Assessment Division against the defendant**?
>
> REVENUE OFFICER IMELDA O. CREGENCIA:
>
> A. **Yes, Attorney**.
>
> ATTY. KAREN G. SUPAPO:
>
> Q. Is it correct to say, Ms. Witness, that, in fact, you are only relying [on] the case records assigned to you?
>
> REVENUE OFFICER IMELDA O. CREGENCIA:
>
> A. The case was assigned to me but I evaluated all the relevant records regarding the case of petroleum.
>
> PRESIDING JUSTICE ROMAN G. DEL ROSARIO:
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> **So, you relied on the basis of documents? Your participation here is merely a review of the documents as provided to you?** (Inaudible)
>
> REVENUE OFFICER IMELDA O. CREGENCIA:
>
> A. To the assessment group. Yes.[45]

Indubitably, the records are bereft of any documentary or testimonial evidence establishing that the PAN and the FLD/FAN were properly served upon defendant.

Plaintiff's argument that since defendant was able to file a protest against the FAN/FLD, such filing effectively admits the receipt of the FAN/FLD, fails to convince.

Quite the contrary, the Supreme Court, in *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue*,[46] ruled that noncompliance with the requirements of due process is not cured by

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[45] TSN dated October 2, 2024, pp. 9-10.
[46] G.R. No. 244202, July 10, 2023.

the fact that the taxpayer is able to file a protest against the assessment, to wit:

> The parties stipulated that the FAN was personally served upon Mr. Angelo Pineda, who at that time, was merely the reliever security guard at petitioner's premises. However, as astutely observed by the CTA Third Division in its Resolution dated March 16, 2017, the stamp receipt found on the FAN shows that there was no indication of his authority to act on behalf of petitioner, contrary to the clear requirement under Section 3.1.4 of Revenue Regulations No. 12-99. The fact that Angelo Pineda is not even an employee of petitioner serves to further exacerbate his lack of authority to represent the corporation.
>
> **Notably, this defect in complying with the requirements of due process was not cured by the fact that the taxpayer was able to file a protest to the FAN**. This Court has repeatedly enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices in order to uphold the taxpayer's constitutional rights.
>
> **Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect**. Consequently, given that the assessment notices were void, the resulting WDL is likewise invalid and without effect. *(Boldfacing supplied)*

Indeed, plaintiff's failure to prove that the subject assessment notices were duly served upon and received by defendant, in compliance with the due process requirements, is certainly fatal to its cause.

In *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,*[47] the Supreme Court held that failure to prove receipt of the assessment by a taxpayer would necessarily lead to the conclusion that no assessment was issued, to wit:

> In the case of *Nava v. Commissioner of Internal Revenue*, this Court stressed on the importance of proving the release, mailing or sending of the notice.
>
>> While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. Of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without

[47] G.R. No. 224327, June 11, 2018.

> adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.
>
> **Thus, the failure of petitioner to prove the receipt of the assessment by respondent would necessarily lead to the conclusion that no assessment was issued.**
>
> xxx xxx xxx
>
> It must be remembered that [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. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself. *(Boldfacing supplied)*

It is incumbent upon plaintiff to prove by preponderant evidence that the assessment notices were actually received by defendant. Stated differently, it is not simply a question of whether the assessment notices were sent to defendant by plaintiff, but it is imperative that defendant actually received said tax assessment notices.

Considering that plaintiff was unable to present sufficient evidence that the subject PAN, and FAN/FLD were properly served and received by defendant or by its authorized representative, there is no valid assessment to speak of in this case. Thus, the failure of plaintiff to prove receipt of the assessment by defendant gives rise to the conclusion that there is no valid assessment that may be a legitimate subject of collection under the WDL or through the present action for collection.

Having determined that the assessment is void due to plaintiff's failure to establish actual receipt of the PAN and FLD/FAN by defendant, the Court finds it unnecessary to resolve defendant's contention regarding the prescription of the periods to assess and collect. In the absence of a valid assessment, there exists no assessment upon which the prescriptive periods may operate or be tested against.

WHEREFORE, premises considered, the Court resolves to:

(1) **NOTE** plaintiff's Manifestation anent Exhibit "P-4";

(2) **GRANT** plaintiff's Motion for Reconsideration;

(3) **ADMIT IN EVIDENCE** Exhibits "P-2-A", and "P-2-B"; and,

(4) **GRANT** defendant's Demurrer to Evidence.

Accordingly, the Warrant of Distraint and/or Levy No. AMT-WDL-2019-2408 dated October 9, 2019, Assessment Notice No. 34-14-IT-17-284, Assessment Notice No. 34-14-VT-17-285, and Assessment Notice No. 34-14-WF-17-286, and Formal Letter of Demand with Details of Discrepancies, all dated December 29, 2017 are **CANCELLED** and **SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from taking any further action against defendant Petroleum Technology & Research Corporation arising from Assessment Notice No. 34-14-IT-17-284, Assessment Notice No. 34-14-VT-17-285, and Assessment Notice No. 34-14-WF-17-286, and Formal Letter of Demand with Details of Discrepancies, all dated December 29, 2017. This judgment is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice