REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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INTERVET PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8815**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 2 4 2016 4:00 p.m.

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DECISION

CASANOVA, *J.*:

Before this Court is a Petition for Review[1], filed on May 6, 2014, by petitioner, Intervet Philippines Inc., praying that judgment be rendered cancelling the assessments and declaring void the Formal Letters of Demand (FLD) and Assessment Notices dated January 15, 2010 for income tax, value added tax (VAT), expanded withholding tax (EWT), and compromise penalty in the total amount of Forty-Nine Million One Hundred Thirty-Nine Thousand Four Hundred Sixty-Four and Fifty Centavos (₱49,139,464.50), inclusive of interest, for taxable year 2006.

Petitioner is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines with principal office at the 43rd Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City, Metro Manila.[2] It is engaged in the wholesale of animal health products and was a wholly owned subsidiary of a multinational corporation, Akzo Nobel Pharma International B.V.[3], and

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[1] Docket (Vol. I), pp. 15-48
[2] Par. 1, The Parties, Petition for Review, *Ibid.*, p. 15
[3] Exhibit "R-1", BIR Records, p. 236

was later on acquired by Merck Sharp & Dohme, as subsidiary of Merck Sharp & Co., Inc., a corporation organized and domiciled in the United States of America.[4]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law with authority to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 7, 2007, BIR Revenue District Office (RDO) No. 43 - Pasig City issued a Letter of Authority (LOA) No. 200700009224[5], authorizing the examination of all internal revenue taxes of petitioner for taxable year 2006. The LOA indicated petitioner's address at the 3608 Robinsons Equitable Tower ADB Ave., Ortigas Center, Pasig City ("Pasig City office").

Thereafter, in a Memorandum[6], dated November 19, 2006[*sic*], Revenue Officer II Mariano C. Boliche wrote to the Revenue District Officer of RDO No. 43 - Pasig City, that the said Letter Authority No. 200700009224 remained unserved because the taxpayer vacated their place and moved to the 8th Floor, Cyber One Building, Eastwood Ave., Eastwood City Cyberpark, Quezon City ("Quezon City office"). He recommended that said Letter of Authority be transmitted/indorsed to RDO No. 40, Quezon City.

Subsequently, on July 23, 2008, a Certificate of Registration[7] was issued by the BIR RDO No. 40 - Quezon City reflecting the 8th Floor, Cyber One Building, Eastwood Ave., Eastwood City Cyberpark, Quezon City as petitioner's registered address.

Hence, on September 9, 2008, Revenue District Officer Rosemarie Ramos-Ragasa of RDO No. 40 - Quezon City, issued a LOA No. 00040354[8], and, also, a Final Notice[9], requesting petitioner to present its accounting records. Both the LOA and Final Notice indicated that petitioner's address is at its Quezon City office. Accordingly, petitioner

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[4] Petition for Review, Docket (Vol. 1), p. 15
[5] Exhibit "R-2", BIR Records, p. 10
[6] Exhibit "R-1", BIR Records, p. 11
[7] Exhibit "P-3-10"
[8] Exhibit "P-3-11"
[9] Exhibit "R-1", BIR Records, p. 36

presented additional documents and schedules pertaining to the assessment of its internal revenue taxes from January 1, 2006 to December 31, 2006.[10]

Meanwhile, in a special meeting of petitioner's Board of Directors held on September 24, 2008, a Resolution authorizing the transfer of petitioner's business address from its Quezon City office to 12th Floor, San Miguel Properties Centre, No. 7 St. Francis Street, Ortigas Center, Mandaluyong City ("Mandaluyong City office"), effective August 1, 2008, was adopted.[11] A Certification of Registration[12] reflecting petitioner's Mandaluyong City office as its registered address was issued by BIR RDO No. 41 – Mandaluyong on January 22, 2009.

On September 15, 2009, respondent issued a Post Reporting Notice[13], which was addressed to petitioner's Pasig City office, summarizing the report of audit investigation under its previously issued LOA No. 00040354[14] dated September 9, 2008.

On December 28, 2009, respondent issued a Preliminary Assessment Notice[15] (PAN) against petitioner. The PAN indicated the Pasig City office as petitioner's address. Subsequently, on January 15, 2010 and April 22, 2010, respondent issued a Formal Letter of Demand[16] and Preliminary Collection Notice[17], respectively, which were both addressed also to petitioner's Pasig City office. Then, on August 9, 2010, Regional Director Antonio F. Montemayor of Revenue Region No. 7 issued Preliminary Collection Notices[18] to petitioner addressed to both its Mandaluyong City office and Quezon City office.

On August 25, 2010, respondent issued a Final Notice Before Seizure[19], again, addressed to both petitioner's Mandaluyong City office and Quezon City office.

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[10] Letter dated December 12, 2008, Exhibit "R-1", BIR Records, p. 39; Letter dated January 27, 2009, Exhibit "R-1", BIR Records, p. 40; Letter dated February 5, 2009, Exhibit "R-1", BIR Records, p. 41
[11] Exhibit "P-3-25"
[12] Exhibit "P-3-30"
[13] Exhibit "R-1", BIR Records, p. 717.
[14] *Supra* No. 8
[15] Exhibit "P-3-3"; Exhibit "R-8", BIR Records, pp. 748-749
[16] Exhibit "P-3-4"; Exhibit "R-14", BIR Records, p. 752-753
[17] Exhibit "R-1", BIR Records, p. 760
[18] Exhibit "R-1", BIR Records, p. 770 and p. 772, respectively
[19] Exhibit "R-1", BIR Records, p. 777 and p. 775, respectively

Meanwhile, petitioner was acquired by by Merck Sharp & Dohme, a subsidiary of Merck Sharp & Co., Inc., thereby prompting petitioner to transfer its principal office at the 43rd Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City, Metro Manila ("Makati City office").

Then, on September 20, 2011, petitioner received by mail a Preliminary Collection Letter[20] (PCL) dated August 31, 2011 issued by BIR RDO No. 50 - South Makati, requesting petitioner to pay an aggregate amount of Sixty Six Million Seven Hundred Ninety Two Thousand Eight Hundred Twenty Eight Pesos and Seventy Seven Centavos (₱66,792,828.77), allegedly representing petitioner's unpaid internal revenue tax liabilities under the Formal Letter of Demand[21] dated January 15, 2010.

On September 30, 2011, petitioner wrote a letter[22] to respondent, requesting for the cancellation of the collection letter and the tax assessments issued against it, arguing that there was no valid assessment notice and that respondent's right to asses petitioner has already prescribed. Petitioner, further, argued that it properly notified respondent of its change of address.

On October 20, 2011, petitioner again wrote a letter[23] to respondent to prove that it has been compliant with its tax obligations and that it properly paid its tax liabilities for the year 2006. Petitioner, however, noted that such letter does not signify its admission of the validity of the collection letter.

On January 6, 2012, petitioner received by mail a Final Demand Letter dated January 3, 2012 from the Chief, Legal Division of Revenue Region No. 8 - Makati, directing petitioner to appear before the Office of the Legal Division within 3 days from its receipt thereof.[24]

In a letter dated June 4, 2012, petitioner reiterated its position in its September 30, 2011 letter, questioning the validity of the issuance of the assessment and collection notice.

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[20] Exhibit "P-3-2"
[21] *Supra* No. 16
[22] Exhibit "R-1", BIR Records, pp. 807-811
[23] Exhibit "R-1", BIR Records, pp. 872-880
[24] Par. 4, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 555

Thus, on February 27, 2014, Revenue Officers Arlyn T. Corro, Agripina R. Vallestero, Antonio A. Cariaso, and Luisa M. Labad filed a Joint Complaint-Affidavit[25] against petitioner and its President and General Manager, Dr. Cesar Policarpio, for willful failure to pay taxes for taxable year 2006, in violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended. Accordingly, an Information was filed against petitioner, and on March 11, 2014, a subpoena[26] was issued against Dr. Cesar Policarpio.

Petitioner considered the referral letter it received on April 8, 2014 as constructive denial of its protests dated September 30, 2011 and October 20, 2011. Hence, on May 6, 2014, petitioner filed the instant Petition for Review[27] before the Court.

In her Answer[28] filed on June 23, 2014, respondent alleged the following Special and Affirmative Defenses:

> "13. This Honorable Court lacks jurisdiction because of the FLD and FAN have already become final, executor[y] and demandable due to the failure of the Petitioner to submit the required documents within sixty (60) days from the filing of its protest.
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> 14. Petitioner must prove that its protest to the FLD and FAN complied with the provisions of Section 228 of the 1997 National Internal Revenue Code, as amended, and Revenue Regulation 12-99, as hereunder quoted:
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> > '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*

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[25] Exhibit "P-3-47"
[26] Exhibit "P-3-45"
[27] *Supra* No. 1
[28] Docket (Vol. I), pp. 141-146

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.'

Section 3.1.5 of Revenue Regulation No. 12-99 provides as follows:

'3.1.5 Disputed Assessment. – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed assessment. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto. The taxpayer shall submit the required documents in support of his protest within sixty

> (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation. If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof, the assessment shall become final, executory and demandable. If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable. In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner. If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayers, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, the assessment shall become final, executory and demandable.'

15. A perusal of Petitioner's Protest to the FLD and FAN would show that it failed to comply with the parameters provided by Revenue Regulation 12-99.

16. Tax assessment by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessment. (Commissioner of Internal Revenue vs. Bank of the Philippines Islands, GR No. 134062 dated April 17, 2007).

17. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on the estimate is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessments. (Marcos II vs. Court of Appeals, G.R. 120880, June 5, 1997, 273 SCRA 47)

18. Paragraph 3.1.7 of Revenue Regulation No. 12-99 provides:

> 3.1.7 Constructive Service. If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer.

19. An assessment is deemed made only when the demand letter or notice of assessment is released, mailed or sent by an internal revenue officer to the taxpayer. It is not required that the notice be received by the taxpayer within the prescribed period. But the sending of notice must be clearly proven. (Basilan Estates vs. CIR, G.R. L-22492, Sept. 5, 1967, 21 SCRA 17; Barcelon, Roxas Securities, Inc. vs. CIR, G.R. 157064, Aug. 7, 2006; CIR vs. Bautista, May 27, 1959)

> 20. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. (CIR vs. Metro Star Superama, Inc. GR No. 185371, December 8, 2010).
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> 21. Further, Petitioner must also prove that it complied with the provisions of Revenue Memorandum Order No. 40-2004, as amended by Revenue Memorandum Order No. 11-2005 as to the requirements for the transfer of taxpayer's registration to another Revenue District Office within the Bureau of Internal Revenue."

On July 1, 2014, petitioner filed its Reply[29] .

Afterwards, respondent filed her pre-trial brief[30] on July 14, 2014 *via* registered mail; while, petitioner, on the other hand, filed its pre-trial brief[31] on August 20, 2014. Subsequently, on October 15, 2014, the parties filed their Joint Stipulation of Facts and Issues[32], which was approved and adopted by the Court in its Pre-Trial Order[33] dated October 21, 2014. The initial presentation of petitioner's evidence was then set on November 12, 2014.

In support of its petition, petitioner presented as witnesses its Finance Controller, Ms. Estela B. Valenzuela[34], and the court commissioned Independent Certified Public Accountant (ICPA) Mr. Jerome Antonio B. Constantino.[35] Petitioner, likewise, filed its Formal Offer of Evidence[36] on December 19, 2014.

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[29] Docket (Vol. I), pp. 150-153
[30] Respondent's Pre-Trial Brief, *Ibid.*, pp. 227-231
[31] Petitioner's Pre-Trial Brief, *id.*, pp. 273-283
[32] Docket (Vol. II), pp. 554-560
[33] *Ibid.*, pp. 562-569
[34] Minutes of the Hearing dated November 12, 2014, Docket (Vol. II), p.577
[35] Minutes of the Hearing dated November 26, 2014, Docket (Vol. II), p. 721
[36] Docket (Vol. II), pp. 722-746

On the other hand, respondent presented Revenue Officer Trinity J. De Leon-Rivera, as her sole witness.[37] After which, respondent filed her Formal Offer of Documentary Evidence[38] on March 12, 2015.

As directed by the Court, respondent filed her Memorandum[39] on June 18, 2015, while petitioner filed its Memorandum[40] on June 25, 2015. Accordingly, the case was then submitted for decision on June 30, 2015.[41]

In their respective Pre-Trial Brief, the parties submitted the following issues for this Court's disposition:

For the respondent[42]:

> "1. Whether or not Petitioner is liable for deficiency Income Tax in the amount of PhP35,834,762.46, Value Added Tax in the amount of PhP13,057,498.69, Expanded Withholding Tax in the amount of PhP226,203.35, and Compromise Penalty in the amount of PhP21,000.00, inclusive of interest for taxable year 2006; and
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> 2. Whether or not the Assessments have already become final, executory, and demandable."

For the petitioner[43]:

> "1. Whether or not the assessments for deficiency income tax, value added tax and expanded withholding tax and compromise penalty (hereinafter collectively the 'Assessments') are void on account of the Respondent's failure to observe due process in the issuance of the Assessments;
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> 2. Assuming that the Assessments are not void, whether or not the Assessments are barred by prescription;

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[37] Minutes of the Hearing dated March 4, 2015, Docket (Vol. II), p. 786
[38] Docket (Vol. II), pp. 787-791
[39] *Ibid.*, pp. 810-819
[40] *id.*, pp. 820-864
[41] Resolution, Docket (Vol. II), p. 868
[42] Proposed Stipulation of the Issues, Respondent's Pre-Trial Brief, Docket (Vol. I), p. 229
[43] Proposed Stipulation of Issues, Petitioner's Pre-Trial Brief, Docket (Vol. I), pp. 274-276

3. Assuming that the Assessments are not void, whether or not the Petitioner filed a timely protest against the Assessments;

4. Whether or not Respondent can change her theory on appeal, that is, maintain in her Answer that the Assessments are final, executory and demandable based on the alleged failure of Petitioner to submit documents within sixty days from the filing of its protest when in the referral letter to the Department of Justice in the case entitled *Bureau of Internal Revenue vs. Dr. Cesar Policarpio, Intervet Philippines, Inc., NPS Docket No. XVI-INV-14B-00054 For Violation of Section 256 of the NIRC of 1997*, she maintained that the Assessments have become final and demandable because of Petitioner's alleged failure to file a timely protest. And, assuming Respondent can change her position on appeal, whether Petitioner did in fact submit its documentation within the required time period;

5. Assuming that the deficiency income tax assessment is not void, whether or not petitioner is liable for the assessed deficiency income tax in the total amount of ₱35,222,024.83;

6. Whether or not the assessment for deficiency VAT on the disallowed unsupported input tax is void on account of Respondent's failure to inform Petitioner in writing of the facts on which the assessment was made and details of the disallowed input taxes in violation of Section 228 of the NIRC of 1997;

7. Assuming that the deficiency VAT assessment is not void, whether or not Petitioner is liable for deficiency VAT in the total amount of ₱12,859,947.71;

8. Assuming that the deficiency expanded withholding tax assessment is not void, whether or not Respondent can assess both a deficiency expanded withholding tax and a deficiency income tax on the same disallowed expense;

9. Assuming that the deficiency expanded withholding tax assessment is not void, whether or not Petitioner is liable for deficiency expanded withholding tax in the amount of ₱222,447.35; and

10. Whether or not [*petitioner*] is liable for the assessed compromise penalty totaling ₱21,000.00."

The above-enumerated issues can be summarized into whether the assessments for deficiency income tax, value added tax and expanded withholding tax and compromise penalty for taxable year 2006 are void; and, whether petitioner is liable for deficiency income tax in the amount of ₱35,834,762.46, VAT in the amount of ₱13,057,498.69, EWT in the amount of ₱226,203.35, and compromise penalty in the amount of ₱21,000.00, inclusive of interest, or in the total amount of ₱49,139,464.50 for taxable year 2006.

In its Petition, petitioner mainly argues that the assessments issued against it are null and void because respondent blatantly violated petitioner's right to due process by willfully and negligently serving the said assessment notices to the wrong address. By doing so, the assessments cannot give rise to any tax liability on the part of petitioner. Petitioner further adds that, assuming *arguendo* that the issuance of the assessments are valid, they are, nonetheless, barred by prescription since petitioner only came to know of the assessments when it received the PCL on September 20, 2011, which is more than the allotted period prescribed within which to assess a taxpayer.

Moreover, petitioner claims that respondent cannot change the theory of the case on appeal. Petitioner argues that in its tax evasion case, respondent's theory was that the assessments became final and executory because of petitioner's alleged failure to timely file a protest. While, in the instant case, respondent alleges in her Special and Affirmative Defenses that the assessments have become final, executory, and demandable due to petitioner's alleged failure to submit the required documents within sixty (60) days from the filing of its protest. Lastly, petitioner claims that the assessments are devoid of factual and/or legal basis.

On the other hand, respondent alleges that the assessments for deficiency income tax, VAT, EWT, and compromise penalty for calendar year 2006 were issued in accordance with applicable laws and regulations, and that the factual and legal bases of the assessments are contained in the FLD and FAN with Details of Discrepancies. Respondent further argues that petitioner failed to file an administrative protest to the FLD and Assessment Notices thereby causing the said assessments to be final, executory, and demandable.

After due consideration of the arguments presented by both parties, this Court finds merit in the instant Petition.

Verily, when it comes to the issuance, sending and mailing of assessments and other tax notices, Section 228 of the NIRC of 1997, as amended, in relation to Section 2 of Revenue Regulations (RR) No. 18-2013[44], which amended certain sections of RR No. 12-99[45], provides the due process requirement that should be observed both by the CIR, or her duly authorized representative, and the taxpayer concerned. The said section provides:

> "**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**: *x x x*
>
> *xxx xxx xxx*
>
> 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.
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> *xxx xxx xxx" (Emphases Ours)*

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[44] "AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT", dated November 28, 2013

[45] "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated September 6, 1999

In addition thereto:

> "**SECTION 2.** ***Amendment.*** — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:
>
> > **'SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —**
> >
> > 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
> >
> > **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*** *x x x.*
> >
> > *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).' *(Emphases and Italics Ours)*

Parenthetically, the timely issuance of a PAN, FLD and FAN is a substantive prerequisite to tax collection. This Court cannot turn a blind eye on the importance of such notices. The use of the word *"shall"* in subsections 3.1.1 and 3.1.3 describes the mandatory nature of the service of the PAN and the FLD/FAN, the absence of which renders nugatory any assessment made by the tax authorities.

In the instant case, petitioner claims that respondent sent the assessments to petitioner's old abandoned address, despite having actual knowledge of petitioner's new address. To better grasp petitioner's allegation, a table of the events that transpired is provided below, *to wit*:

DATE	ASSESSMENT ISSUANCES	ADDRESS IT WAS SENT	ACTUAL ADDRESS OF PETITIONER
September 7, 2007	BIR RDO No. 43 – Pasig City issued a LOA No. 200700009224[46]	3608 Robinsons Equitable Tower ADB Ave., Ortigas Center, Pasig City (Pasig City office)	8th Floor, Cyber One Building, Eastwood Ave., Eastwood City Cyberpark, Quezon City (Quezon City office)
September 9, 2008	BIR RDO No. 40 – Quezon City, issued LOA No. 00040354[47] with Final Notice[48]	(Quezon City office)	(Quezon City office)
September 15, 2009	Respondent issued a Post Reporting Notice[49]	(Pasig City office)	12th Floor, San Miguel Properties Centre, No. 7 St. Francis Street, Ortigas Center, Mandaluyong City (Mandaluyong City office)
December 28, 2009	Respondent issued a PAN[50]	(Pasig City office)	(Mandaluyong City office)
January 15, 2010	Respondent issued a FLD[51]	(Pasig City office)	(Mandaluyong City office)
April 22, 2010	Respondent issued a Preliminary Collection Notice[52]	(Pasig City office)	(Mandaluyong City office)
August 9, 2010	Revenue Region No. 7 issued Preliminary Collection Notices[53]	(Mandaluyong City office) -and- (Quezon City office)	(Mandaluyong City office)
August 25, 2010	Respondent issued a Final Notice Before Seizure[54]	(Mandaluyong City office) -and- (Quezon City office)	(Mandaluyong City office)

[46] Exhibit "R-2", BIR Records, p. 10
[47] Exhibit "P-3-11"
[48] Exhibit "R-1", BIR Records, p. 36
[49] Exhibit "R-1", BIR Records, p. 717.
[50] Exhibit "P-3-3"; Exhibit "R-8", BIR Records, pp. 748-749
[51] Exhibit "P-3-4"; Exhibit "R-14", BIR Records, pp. 752-753
[52] Exhibit "R-1", BIR Records, p. 760
[53] Exhibit "R-1", BIR Records, p. 770 and p. 772, respectively

August 31, 2011	BIR RDO No. 50 - South Makati issued a Preliminary Collection Letter[55]	43rd Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City, Metro Manila (Makati City office)	(Makati City office)
January 3, 2012	Revenue Region No. 8 - Makati issued a Final Demand Letter	(Makati City office)	(Makati City office)

As gleaned above, majority of respondent's assessment issuances were sent at the wrong address. While this Court is aware of the presumption that a letter duly directed and mailed was received in the regular course of the mail,[56] such presumption, however, is merely a disputable one; a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[57]

Going back to the instant case, after respondent finally sent the LOA No. 00040354 with Final Notice dated September 9, 2008 to petitioner's right business address, the next assessment issuance sent to petitioner was already the Preliminary Collection Notices dated August 9, 2010. Clearly, the procedure earlier stated in the foregoing provisions was not properly observed. As such, petitioner's right to due process was evidently violated.

In fact, in the case of *Estate of The Late Julinana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[58], it was held that due process requires that petitioner must actually receive the Pre-Assessment Notice and Final Assessment Notice. The Supreme Court rationalized that:

> "In *Republic v. Dela Rama,* we clarified that, when an estate is under administration, notice must be sent to the administrator of the estate, since it is the said administrator, as representative of the estate, who has the legal obligation to pay and discharge all debts of the estate and to perform all orders of the court. In that case, legal notice of the

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[54] Exhibit "R-1", BIR Records, p. 777 and p. 775, respectively
[55] Exhibit "P-3-2".
[56] Section 3(v), Rule 131 of the Rules of Court
[57] *See* Republic of the Philippines vs. Court of Appeals et al., G.R. No. L-38540, April 30, 1987
[58] G.R. No. 155541, January 27,2004

assessment was sent to two heirs, neither one of whom had any authority to represent the estate. We said:

> **'The notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect.** In the case of *Bautista and Corrales Tan v. Collector of Internal Revenue* ... this Court had occasion to state that **"the assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment." It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory.** *x x x'" (Emphases Ours)*

To recapitulate, it is a cardinal rule in administrative law that the taxpayer be accorded due process. A void assessment bears no valid fruit.[59] Following the pronouncement by the Supreme Court in *Commissioner of Internal Revenue vs. Azucena T. Reyes,*[60] "[t]he 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. *x x x*"

Henceforth, considering that the assessment notices made by respondent are void, this Court need not belabor on the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments covering income tax, value added tax, expanded withholding tax, and compromise penalty in the total amount of ₱49,139,464.50, inclusive of interest, for taxable year 2006 is hereby **CANCELLED** and **WITHDRAWN.**

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[59] *See* Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. No. 159694 and G.R. No. 163581, January 27, 2006

[60] G.R. No. 159694 and G.R. No. 163581, January 27, 2006 *citing* Ang Tibay vs. Court of Industrial Relations (69 Phil. 635)

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice