REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ALBERTO B. FINEZ, Petitioner,	**CTA CASE NO. 9715**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **FABON-VICTORINO,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 08 2019 1:15pm

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DECISION

DEL ROSARIO, P.J.:

Submitted for decision of the Court is the Petition for Review[1] filed on November 16, 2017 by Alberto B. Finez (*petitioner*) praying that the Court declare as null and void the Warrant of Distraint and/or Levy dated September 7, 2017 issued by the Commissioner of Internal Revenue (*respondent*).

PARTIES

Petitioner is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 918-641-481-000 with registered address at Ext. I, East Quirino Highway, Gumaoc East, San Jose Del Monte City, Bulacan.[2]

Respondent[3] is the duly appointed Commissioner of Internal Revenue (CIR), mandated by law to enforce and implement the

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[1] Docket, pp. 10-34.
[2] Paragraph 2(b), Joint Stipulation of Facts and Issues (JSFI), Docket, p. 219; Paragraph II, Pre-Trial Order (PTO), Docket, p. 234.
[3] The incumbent CIR is Hon. Caesar R. Dulay.

National Internal Revenue Code (NIRC) and related statutes, including, among others the power to cancel disputed assessments. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS

Respondent, through the Office of the Regional Director of Revenue Region No. 5, issued Letter of Authority (LOA) with reference number LOA-25B-2012-00000001 dated January 16, 2012[4] which authorized Revenue Officer (RO) Ariston De Guzman and Group Supervisor (GS) Benjamin Almia to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010.[5]

Respondent issued *Subpoena Duces Tecum* No. RR5-2012-RD25B-20 dated June 20, 2012,[6] commanding petitioner to appear before the Office of the Chief, Legal Division, and requiring him to bring and submit his books of accounts and other accounting records for the year 2010.[7]

Thereafter, Preliminary Assessment Notice (PAN) No. 5654 dated March 25, 2015[8] was issued and a copy thereof was simply left at petitioner's address at Perez, Meycauayan, Bulacan on April 14, 2015.[9]

Formal Letter of Demand (FLD) No. 34503[10] (for income tax, value added tax [VAT] and expanded withholding tax [EWT]) with enclosed Assessment Notice No. 34503[11] and FLD No. 20841[12] (for compromise penalty), all dated June 8, 2015, were served to petitioner by leaving a copy thereof with Ms. Merilla F. Joble on June 11, 2015.[13] Petitioner was assessed in the aggregate amount of ₱ 3,074,244.04, broken down, as follows:

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[4] Exhibit "R-1", Docket, p. 302
[5] Paragraph 2(b), JSFI, Docket, p. 219; Paragraph II, Pre-Trial Order (PTO), Docket, p. 234.
[6] Exhibit "R-2", Docket, p. 303.
[7] Paragraph 2(e), JSFI, Docket, p. 220; Paragraph II, Pre-Trial Order (PTO), Docket, p. 234.
[8] Exhibit "R-7", Exhibit "P-11", Docket pp. 324-325.
[9] Exhibit "R-8", Exhibit "P-12", Docket pp. 326-327.
[10] Exhibit "R-10-A", Exhibit "P-14-a", Docket, p. 334.
[11] Exhibits "R-9" to "R-9-B", Exhibits "P-13" to "P-13-b", Docket, pp. 328-330.
[12] Exhibit "R-10"; Exhibit "P-14", Docket, pp.331-332.
[13] Exhibit "R-11", Exhibit "P-15", Docket, pp. 335-336.

Kind of Tax	Amount
Income Tax	₱ 420,890.73
VAT	2,503,927.46
EWT	80,925.85
Compromise Penalty	68,500.00
TOTAL	**₱ 3,074,244.04**

Preliminary Collection Letter (PCL) dated August 26, 2015[14] and Final Notice Before Seizure (FNBS) dated September 15, 2015[15] were issued and sent separately through registered mail to petitioner.

On December 11, 2015, Warrant of Garnishment No. RR5-2AMT-DA (11-17-15) 1578 was issued to Land Bank of the Philippines.[16]

On October 12, 2017, the Warrant of Distraint and/or Levy (WDL) dated September 7, 2017 was served upon petitioner.[17]

Thus, on November 16, 2017, petitioner filed the present Petition for Review.

On January 19, 2018, within the extended period, respondent filed his Answer with Special Affirmative Defenses[18] alleging, among others, that: *(i)* since the Petition for Review was filed out of time, the Court has no jurisdiction over the subject matter of the case, pursuant to Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, in relation to Section 228 of the National Internal Revenue Code (NIRC); *(ii)* petitioner was afforded due process in the issuance of a deficiency tax assessment pursuant to Revenue Regulations (RR) No. 12-99, as amended by RR 18-2013; and *(iii)* the assessments issued against petitioner in the amounts of ₱420,890.73, ₱2,503,927.46, ₱80,925.85, and ₱68,500.00 as deficiency income tax, VAT, EWT and compromise penalty, respectively, have become final, executory and demandable, hence, petitioner has no cause of action against respondent pursuant to Section 1(g) of Rule 16 of the 1997 Revised Rules of Court. Respondent, thus, moved that the Petition for Review be dismissed for lack of merit.

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[14] Exhibit "R-14", Docket, p. 339.
[15] Exhibit "R-15", Docket, p.340.
[16] Exhibit "R-12", Docket, p. 337.
[17] Paragraph 2(d), JSFI, Docket, p. 220; Paragraph II, Pre-Trial Order (PTO), Docket, p. 234.
[18] Docket, pp. 44-54.

In the Resolution dated January 24, 2018,[19] petitioner was ordered to comment on respondent's Motion to Dismiss incorporated in his Answer with Special Affirmative Defenses within ten (10) days from receipt thereof. On February 15, 2018, petitioner timely filed his Comment/Opposition (to Respondent's Motion to Dismiss Incorporated in the Answer with Special Affirmative Defenses).[20]

In the Resolution dated February 23, 2018,[21] the Court denied respondent's Motion to Dismiss. Citing *Philippine Journalists Inc. vs. Commissioner of Internal Revenue*, the Court ruled that it has jurisdiction to hear the instant petition as it pertains to the validity of the WDL dated September 7, 2017 which was issued by respondent through BIR's Revenue Region 5, Caloocan City.

Pre-Trial Conference proceeded on April 12, 2018.[22] On May 4, 2018, the parties filed their Joint Stipulation of Facts and Issues (JSFI).[23]

On May 15, 2018, the Court approved the parties' JSFI, terminated the pre-trial and issued the Pre-Trial Order to govern the proceedings of the case.[24]

During trial, petitioner presented himself[25] as his sole witness.[26] He testified that:

1. He is duly registered with the BIR and was issued Tax Identification Number 918-481-000 with registered address at Ext.1, East Quirino Highway, Gumaoc East, San Jose Del Monte, Bulacan, as indicated in the WDL dated September 7, 2017;

2. He or any of his duly authorized representative did not receive the LOA;

3. He received the *Subpoena Duces Tecum* dated June 20, 2012. In response to the subpoena, he submitted to the BIR through

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[19] Docket, p. 80.
[20] Docket, pp. 84-99.
[21] Docket, pp. 103-105.
[22] Minutes of the April 12, 2018 Hearing, Docket, p.213; Order dated April 12, 2018, Docket, p. 214.
[23] Docket, pp. 219-223.
[24] Docket, pp. 234-238.
[25] Exhibit "P-10" (Judicial Affidavit of petitioner), Docket, pp. 262-270; Minutes of May 23, 2018 Hearing, Docket, p. 239; Order dated May 23, 2018, Docket, p. 240.
[26] Minutes of the June 20, 2018 Hearing, Docket, p. 241; Order dated June 20, 2018, Docket, p. 242.

Revenue Region No. 5, a Letter dated August 3, 2012 requesting that the docket of the case be returned to the investigating officer for the submission of the required documents and continuation of the investigation. His request was granted by the BIR as evidenced by the 1st Indorsement dated August 3, 2012;

4. ABFinez Engineering Services (ABFinez), which was a single proprietorship wherein petitioner was the President/General Manager, only started its operation in 2011. In early 2011, in order to finance his business, he wished to avail of bank loans. To comply with the bank's requirement to submit financial statements/reports of his business, among others, his previous accountant prepared the financial statements/reports and other related documents required by the banks. He did not, however, pursue any financing applications with any bank and the financial documents prepared for the purpose were never used. As proof of the foregoing, he executed an Affidavit dated August 4, 2011;

5. He registered ABFinez on January 5, 2011 and his application for Authority to Print Invoices was approved on January 28, 2011;

6. After the investigation conducted by the BIR, the investigating officers of Revenue District No. 25B - Sta. Maria Bulacan gave him a Memorandum dated September 27, 2012 stating that there were no books/records to be audited and receipts to be verified for the year 2010 for the reason that he started his business only in 2011 and that the gathered data failed to prove existence of fraud or unrecorded income or infractions he allegedly committed. The Memorandum further recommended that the LOA be set aside due to lack of sufficient evidence to back up the complainant's claim of non-registration of business and use of unregistered receipts;

7. He was surprised that a WDL was issued since he thought that the investigation was closed and terminated and the allegations against him were already put to rest;

8. He is not familiar with Assessment No. 34503 dated June 8, 2015 levying deficiency taxes in the amount of ₱3,005,744.04 and Demand No. 20841 dated June 8, 2015 suggesting compromise penalty in the amount of ₱68,500 as these were not personally received by him; and,

9. In the normal course of ABFinez' business, he had no duly authorized representatives as he wanted to personally focus on the matter in order to fully comprehend the investigation and allegations against him and to keep himself abreast and updated on the developments thereof.

On June 25, 2018, petitioner filed his Formal Offer of Documentary Evidence.[27] In the Resolutions dated July 24, 2018[28] and June 10, 2019,[29] the Court admitted all of petitioner's offered documentary evidence after considering respondent's comments[30] thereon.

Thereafter, respondent presented ROs Angelita V. Mananghaya[31] and Teresita M. Origen[32] as his witnesses. RO Mananghaya testified that:

1. In the tax docket of petitioner, there was an order to conduct investigation and examination of all his internal revenue tax liabilities for the period January 1, 2010 to December 31, 2010 pursuant to LOA No. LOA-25B-2012-00000001 dated January 16, 2012;

2. A *Subpoena Duces Tecum* was issued against petitioner to produce his books of accounts and other accounting records for the taxable year in question. Per Affidavit of Service, the *Subpoena Duces Tecum* was received by Ms. Merrica Flores, the HR/Accounting Manager of petitioner;

3. When petitioner did not comply with the *Subpoena Duces Tecum*, Internal Memorandum dated October 31, 2012 was issued, stating that the assessment was based on Best Evidence Obtainable, which is petitioner's Annual Income Tax Return (ITR) together with his Audited Financial Statements (AFS) for taxable year 2010, since there were no books to be audited and receipts to be evaluated, with a recommendation to issue a PAN against petitioner;

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[27] Docket, pp. 243-248.
[28] Docket, pp. 291-292.
[29] Docket, pp. 406-407.
[30] Comment/Opposition to Petitioner's Formal Offer of Documentary Evidence, Docket, pp. 282-289; Comment (on Petitioner's Manifestation with Motion for Remarking), pp. 377-379.
[31] Exhibit "R-16" (Judicial Affidavit of RO Mananghaya), Docket, pp. 114-123; Minutes of the August 15, 2018 Hearing, Docket, p. 293; Order dated August 15, 2018.
[32] Exhibit "R-17" (Judicial Affidavit of RO Origen), Docket, pp. 126-131; Minutes of the August 15, 2018 Hearing, Docket, p. 293; Order dated August 15, 2018.

4. PAN No. 5654 dated March 25, 2015 was served to petitioner as evidenced by the Affidavit of Service of PAN dated April 16, 2015;

5. FLD Nos. 34503 and 20841 with Assessment Notice No. 34503 all dated June 8, 2015 were served against petitioner as evidenced by Affidavit of Service of Assessment Notice dated June 15, 2015; and,

6. She served the Warrant of Garnishment personally upon the addressee banks. With respect to the WDL, she served it constructively upon two (2) disinterested witnesses namely, Jhoana Marie M. Catu and Sean Paul C. Lahom[33] who were present at the place of business of petitioner after her several failed attempts to serve it personally to petitioner.

On the other hand, RO Origen testified that she issued and served through registered mail the PCL and FNBS as evidenced by the registry receipts attached to them.

After the presentation of his witnesses, respondent filed his Formal Offer of Documentary Evidence on August 17, 2018.[34] In the Resolution dated October 4, 2018,[35] the Court admitted all of respondent's offered documentary evidence despite petitioner's opposition.[36]

In the Resolution dated June 10, 2019,[37] the parties were given a period of thirty (30) days from receipt thereof to file their respective memoranda.

On July 17, 2019, the parties filed a Joint Motion to Refer the Case to Mediation[38]. Their Joint Motion was, however, denied in the Resolution dated July 31, 2019[39] for having been filed past the pre-trial stage, taking it out of the coverage and scope of A.M. No. 11-1-5-SC-PHILJA (Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals).

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[33] Referred to as Sean Paul C. **Laham** in RO Mananghaya's Answer to Question 29 in her Judicial Affidavit and Sean Paul C. **Lahom** in RO Manghaya's Answer to Question 33 in her Judicial Affidavit, Exhibit "R-16" (Judicial Affidavit of RO Mananghaya), Docket, pp. 121-122.
[34] Docket, pp. 296-301.
[35] Docket, pp. 381-382.
[36] Comment/Opposition (to Respondent's Formal Offer of Documentary Evidence dated August 17, 2018, Docket, pp. 361-366.
[37] Docket, pp. 406-407.
[38] Docket, pp. 414-417.
[39] Docket, pp. 436-437.

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In the Resolution dated August 14, 2019,[40] the Petition was submitted for decision in view of the filing of the Memorandum (for the Respondent)[41] on July 15, 2019 and the posting of the Memorandum (for the Petitioner)[42] on July 18, 2019.[43]

Hence, this Decision.

ISSUES

The parties stipulated the following issues for consideration of the Court:

1. Whether or not the Preliminary Assessment Notice No. 5654 dated March 25, 2015, Assessment Notice No. 34503 dated June 8, 2015 for deficiency income tax, VAT and EWT, and Formal Letter of Demand No. 20841 dated June 8, 2015 are null and void;

2. Whether or not the Assessment and the Warrant of Distraint and/or Levy dated September 7, 2017 issued by respondent against petitioner are null and void;

3. Whether petitioner is liable for deficiency VAT for taxable year 2010 in the amount of ₱3,005,744.04 plus surcharge, deficiency interest and delinquency interest as provided in the NIRC of 1997; and,

4. Whether the deficiency tax assessments for taxable year 2010 against petitioner have become final, executory and demandable.[44]

PARTIES' ARGUMENTS

<u>Petitioner's arguments[45]</u>

The subject WDL is null and void for having been issued in violation of petitioner's right to due process. There was no valid service

[40] Docket, p. 439.
[41] Docket, pp. 408-413.
[42] Docket, pp. 418-433.
[43] Docket, p. 438.
[44] Paragraph 3, JSFI, Docket, p. 220; Paragraph II, Pre-trial Order, Docket, p. 234.
[45] Petition for Review, Docket, pp. 15-20; Memorandum for the Petitioner, Docket, pp. 421-430.

of Assessment Notice No. 34503 and of the other demand letters/and or notices upon petitioner in accordance with existing laws and regulations. The address of petitioner existing in the records of the BIR as shown in its Application for Registration and Authority to Print is "Ext 1 East Quirino Hi-Way, Gumaoc East, San Jose Del Monte, Bulacan." RR No. 18-2013, which amended RR No. 12-99 mandates that notices should be served upon the taxpayer at his registered or known address. The Supreme Court decreed in *Commissioner of Internal Revenue vs. BASF Coating,*[46] *Barcelon vs. Commissioner of Internal Revenue,*[47] and *Commissioner of Internal Revenue vs. Metro Star,*[48] that notices should be served upon a taxpayer at his registered or known address and that in case the taxpayer denies receipt of the subject assessment and/or notice, it is incumbent upon the CIR to prove the fact of receipt.

As can be gleaned from the testimonies of respondent's witnesses, ROs Angelita V. Mananghaya and Teresita M. Origen, the *Subpoena Duces Tecum*, PAN, FLDs and Assessment Notice, PCL and FNBS were sent to petitioner using the address Perez, Meycauayan, Bulacan, an address unknown to petitioner and not his registered address.

It is only the *Subpoena Duces Tecum* dated June 20, 2012 and the subject WDL which were sent to petitioner using his registered address.

The presumption of constructive receipt of mail matter sent *via* registered mail cannot be applied in this case because respondent failed to show that the notices were sent to petitioner at his registered address. Thus, it cannot be gainsaid that respondent failed to discharge the burden of proving proper and valid service of the assessment notices, demand letters and other documents upon petitioner in accordance with RR No. 12-99 and/or RR No. 18-2013 as well as the explicit and unequivocal pronouncements of the Supreme Court in the cited cases.

The failure of respondent to serve upon petitioner the assessment notices, demand letters, and other documents denied petitioner of his right to due process, thereby invalidating the subject WDL.

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[46] G.R. No. 198677, November 26, 2014.
[47] G.R. No. 157064, August 7, 2006.
[48] G.R. No. 185371, December 8, 2010.

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Worse, the subject WDL was issued contrary to the recommendations made by the investigating ROs. The ROs, who were authorized to conduct an examination and audit of the books of account and financial records of petitioner for the year 2010 for all internal revenue taxes, stated in their Memorandum dated September 27, 2012 that the data gathered by the ROs failed to prove the existence of any fraud, unrecorded income or infraction committed by petitioner. He could not have incurred any deficiency taxes in relation to the operation of his business ABFinez Engineering Services for 2010, when he started operating the same only in 2011.

<u>Respondent's arguments[49]</u>

The Petition for Review was filed out of time, thus the Court has no jurisdiction over the subject matter of the case pursuant to Section 7, RA No. 1125, as amended, in relation to Section 228 of the NIRC. The final assessment has become final, executory and demandable there being no protest filed by petitioner.

Petitioner's receipt of the WDL on September 7, 2017 as basis for filing an appeal before the Court of Tax Appeals (CTA) is misplaced. Petitioner cannot simply file an appeal before the CTA based on the last communication received from respondent. The jurisdiction of the CTA is limited to decisions or inactions of the CIR in cases involving disputed assessments. Consequently, petitioner's failure to protest the FAN within thirty (30) days from receipt thereof rendered the assessment final, executory and demandable. The issuance of the WDL based on the undisputed assessment is warranted.

Contrary to petitioner's claim that he only registered his business with the BIR in 2011, he was already registered with the BIR as early as May 19, 2009 as evidenced by his Certificate of Registration and duly supported by his income tax return for 2010 and the Taxpayer Information Sheet duly signed by his authorized representative, Eric Flores, stating that the business started in 05/09/2009. Petitioner's act of filing his Annual ITR and AFS for taxable years 2009 and 2010 create a conclusive presumption that he was knowledgeable of the facts stated therein and had made the same in accordance with the provisions of the NIRC. It is also conclusive of the fact that income was derived by ABFinez. The substantial revenue and the cost of service for direct labor, as reflected in the AFS of petitioner, make ABFinez liable for VAT and EWT. Consistent with Article 1431 of the Civil Code and Section 2, Rule 131 of the Rules of Court, the latter being

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[49] Memorandum, Docket, pp. 410-411.

suppletory to the remedies prescribed under the NIRC, the BIR may, therefore, pursue the collection for deficiency assessment for income tax, VAT and EWT. The BIR may likewise file a criminal action for falsification since a tax return (BIR Form No. 1707) is a public document (private records, kept in the Philippines, of private writings), the falsification of which is punishable under Article 172 of the Revised Penal Code and for violation of certain provisions of the NIRC.

The cited September 27, 2012 Memorandum is unofficial, the same being unsigned. BIR Memorandum dated October 31, 2012 which is the official memorandum, contained the findings of RO Ariston De Guzman and Group Supervisor Benjamin M. Almia.

Petitioner was afforded due process in the issuance of the deficiency tax assessment pursuant to RR No. 12-99 as amended by RR No. 18-2013. Based on the BIR Records, Assessment Notice No. 34503 dated June 8, 2015 and Formal Letter of Demand No. 20841 dated June 8, 2015 were validly served by RO Ariston A. De Guzman and received by one Merilla F. Joble, petitioner's HR/Finance Supervisor, a competent person with sufficient age and discretion, having charge of the taxpayer's place of business as evidenced by the Affidavit of Service of Assessment Notice. Despite valid service of the FLD and Assessment Notice, petitioner failed to timely protest the assessment against him rendering the FLD and Assessment Notice final and executory.

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

The Court has jurisdiction over the Petition for Review and the same was timely filed.

The CTA is a court of special jurisdiction. It can only take cognizance of such matters as are clearly within its jurisdiction.[50] Section 7 of RA No. 1125, as amended defines the jurisdiction of the CTA, *viz.*:

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[50] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.*, G.R. No. 169778, March 12, 2014.

> "SEC. 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue**; xxx" (Boldfacing supplied)

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,*[51] the Supreme Court had the occasion to interpret the jurisdiction of the CTA to decide "other matters" arising under the NIRC or other law or part of law administered by the BIR as provided under Section 7(1) of RA No. 1125, as amended, *viz.*:

> "Xxx. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide other matters related to the tax assessment such as the issue on the **right to collect** the same since the CIR maintains that when the law says that the CTA has jurisdiction over other matters, it presupposes that the tax assessment has not become final and unappealable.
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> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term other matters referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
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>> Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>>
>> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.**
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> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term other matters can be supported or even deduced. What is rather clearly apparent, however, is that the term other matters is limited only by the qualifying phrase that follows it.
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> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the **CTA is not limited to**

[51] G.R. No. 169225, November 17, 2010.

> **cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**
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> xxx xxx xxx
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> Furthermore, the phraseology of Section 7, number (1), **denotes an intent to view the CTA's jurisdiction over disputed assessments and over other matters arising under the NIRC or other laws administered by the BIR as separate and independent of each other**. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
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> Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioners assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA." (Boldfacing supplied)

Moreover, in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[52] the Supreme Court categorically confirmed CTA's jurisdiction to determine the validity of the WDL issued by the BIR, to wit:

> "The first assigned error relates to the jurisdiction of the CTA over the issues in this case. The Court of Appeals ruled that only decisions of the BIR denying a request for reconsideration or reinvestigation may be appealed to the CTA. Since the petitioner did not file a request for reinvestigation or reconsideration within thirty (30) days, the assessment notices became final and unappealable. **The petitioner now argue that the case was brought to the CTA because the warrant of distraint or levy was illegally issued and that no assessment was issued because it was based on an invalid waiver of the statutes of limitations**.
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> We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:
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> xxx xxx xxx

[52] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."** (Boldfacing supplied)

On the other hand, under Section 11 of RA No. 1125,[53] as amended, in relation to Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals,[54] a party adversely affected by a decision or ruling of the CIR may appeal to the CTA by a petition for review within thirty (30) days from receipt of the copy of such decision or ruling.

In the case at bar, petitioner received the WDL dated September 7, 2017 on October 12, 2017.[55] Pursuant to the law and rules, he had until November 11, 2017 within which to file a Petition for Review. Thus, the filing of his Petition for Review on November 16, 2017 was timely since November 11 and 12 were a Saturday and Sunday, respectively, and November 13 to 15 were declared as special non-working days in Metro Manila, Bulacan and Pampanga.[56]

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[53] SEC. 11, Who may appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx

[54] SEC. 3. Who may appeal; period to file petition. –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.

[55] Paragraph 4, Petition for Review, Docket, p. 12; Paragraph 2(d), JSFI, Docket, p. 220; Paragraph II, Pre-Trial Order, Docket, p. 234.

[56] Presidential Proclamation No. 332 dated October 23, 2017 (Declaring 13 – 15 November 2017 as a Special (Non-Working) Days in the National Capital Region (NCR), Province of Bulacan and Province of Pampanga).

The CIR's right to assess petitioner for deficiency income tax has prescribed.

While the issue of prescription was not raised by either parties, the Court is imbued with sufficient discretion to consider the same. In *Bank of the Philippines Islands vs. Commissioner of Internal Revenue,*[57] the Supreme Court's affirmation of the pronouncement that courts may *motu proprio* dismiss the case on the ground of prescription is enlightening:

> "If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense. In Heirs of Valientes v. Ramas, we ruled that **the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.**" (Citations omitted; boldfacing supplied)

As a general rule, the CIR has three (3) years from the filing of the return to assess taxpayers. Section 203 of the NIRC of 1997, as amended, provides:

> "Section 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Exceptions to the rule of prescription are provided in paragraph (a), Section 222 of the same Code, *viz.*:

> "Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

[57] G.R. No. 181836, July 9, 2014.

> (a) In the case of a false or fraudulent return with intent to evade tax or of **failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
>
> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) - year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> (e) *Provided, however,* That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." (Boldfacing supplied)

Petitioner filed his Annual ITR for taxable year 2010 on June 7, 2011, thus, respondent had three (3) years from such filing or until June 7, 2014 within which to assess petitioner of deficiency income tax absent any showing that petitioner filed a false or fraudulent return and in the absence of any waiver of the Statute of Limitations entered into by petitioner and respondent.

With respect to petitioner's alleged VAT liability, it appears that petitioner failed to file any VAT return (since he claims that he has yet to commence his business in 2010), thus, the CIR had ten (10) years from February 25, 2010, the due date for filing of the first monthly VAT return assuming his business commenced in January 2010, to assess him for deficiency VAT.

The CIR admitted issuing the FLDs and Assessment Notice on June 8, 2015 assessing petitioner of deficiency income tax and VAT. Since the assessment for deficiency income tax was issued beyond the three (3)-year period to assess, the same is void for having been issued when the CIR's right to assess petitioner has already prescribed.

As to petitioner's alleged deficiency VAT assessment, since the FLDs and Assessment Notice were issued within the ten (10)-year period to assess, the same were timely issued pursuant to the above-quoted paragraph (a), Section 222 of the NIRC of 1997, as amended.

The CIR's failure to serve to petitioner the PAN, FLDs and Assessment Notice, PCL, FNBS and WDL violated petitioner's right to due process.

Proper service of assessment notices to the taxpayer is indispensable to the validity of the issued assessment. In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[58] the Supreme Court declared that tax assessments issued in violation of the due process rights of taxpayers are null and void, to wit:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process."[59] (Boldfacing supplied)

RR No. 12-99, as amended by RR No. 18-2013, sets forth the guidelines and procedures in serving notices to taxpayers, *viz.*:

> "**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

[58] G.R. No. 185371, December 8, 2010.
[59] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018.

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 signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. 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 signatures 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)

Petitioner claims that he did not receive the *Subpoena Duces Tecum*, PAN, FLDs with Assessment Notice, PCL and FNBS as these were sent to him using the address **Perez, Meycauayan, Bulacan**, an address unknown to him and not his registered address with the BIR, which is **Ext 1 East Quirino Hi-Way, Gumaoc East, San Jose Del Monte, Bulacan**. He also asserts that he has no authorized representative on matters dealing with the operations of ABFinez.[60]

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[61] it was enunciated that if the taxpayer denies receiving an assessment from the CIR, it becomes incumbent upon the CIR to prove by competent evidence that such notice was indeed received by the addressee, *viz.*:

"**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.**[8] Flere, the o*nus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.

xxx xxx xxx

The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued." (Boldfacing supplied)

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[60] Exhibit "P-10" (Judicial Affidavit of petitioner), Docket, pp. 262-270; Minutes of May 23, 2018 Hearing, Docket, p.239; Order dated May 23, 2018, Docket, p. 240.
[61] G.R. No. 202695, February 29, 2016.

Respondent did not explain why the *Subpoena Duces Tecum*, PAN, FLDs and Assessment Notice, PCL and FNBS were sent to Perez, Meycauayan, Bulacan and not to petitioner's registered address at Ext. 1 East Quirino Hi-Way, Gumaoc East, San Jose Del Monte, Bulacan despite respondent's prior knowledge as early as January 14, 2011, the date when the BIR issued petitioner's Authority to Print, which indicated his registered address as Gumaoc East, City of San Jose Del Monte, Bulacan.[62]

Petitioner's claim that he did not receive the *Subpoena Duces Tecum* is, however, belied by his Letter dated August 3, 2012[63] referring to the said *Subpoena Duces Tecum* and requesting that the docket of the case be returned to the investigating revenue officer for the submission of the documents mentioned therein and continuance of investigation.

The PAN was allegedly served via personal service "by leaving a copy of PAN to the taxpayer at his/her/its registered address at Perez, Meycauayan, Bulacan".[64] Under RR No. 12-99, as amended, personal service is done by delivering personally a copy of the document to the party's registered or known address or wherever he may be found. As mentioned, Perez, Meycauayan, Bulacan is not the registered address or known address of petitioner.

Meanwhile, the FLDs and Assessment Notice were allegedly served to petitioner through substituted service, *viz.*:

> "BY SUBSTITUTED SERVICE
>
> ■ If the individual taxpayer or responsible officer/s of juridical tax payer was not present and/or not available at the time the copy of the assessment was served, by leaving a copy of the PAN *(should be FLDs and Assessment Notice)* with **Ms. Merilla F. Joble** *(should be Merrica F. Joble as written on FLD No. 20841)*, competent person with sufficient age and discretion, having in-charge in receiving said Assessment Notice at the taxpayer's registered address at Perez, Meycauayan, Bulacan."[65]

Under RR No. 12-99, as amended, substituted service can be resorted to when the party is not present at the registered or known address by leaving the FLDs and Assessment Notice at the party's registered address, with the party's clerk or with a person having

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[62] Exhibit "H", Docket, p. 257.
[63] Exhibit "D", Docket, p. 252.
[64] Exhibits "R-8" and "P-12", Docket, p. 326
[65] Exhibit "R-11" and "P-15", Docket, p. 335.

charge thereof. Again, Perez, Meycauayan, Bulacan is not the registered address or known address of petitioner.

Respondent would have the Court believe that Mericca F. Joble[66] to whom copies of the FLDs and Assessment Notice were allegedly left and Mericca Flores, who received the LOA and *Subpoena Duces Tecum*, are one and the same person. However, upon further questioning of respondent's witness, RO Mananghaya, it was established that she was not competent to testify thereon considering that she does not personally know Merrica Flores.

"JUSTICE CASTAÑEDA:
Let me ask a question. Are the names in the Preliminary Assessment Notice are the recipient in the Preliminary and subpoena duces tecum the same?

Wait do you have any witness who will testify as to the assessment notice?

ATTY. UMIPIG-LABUCAY:
Your Honors, the Revenue Officers who were assigned to conduct the audit were already retired so we cannot anymore...

RO MANANGHAYA:

A. Your Honors, the same.

JUSTICE CASTAÑEDA:
All right. The next question is, who received the subpoena duces tecum? Just give the name.

RO MANANGHAYA
A. Mericca [sic] Flores.

JUSTICE CASTAÑEDA:
Who received the Preliminary Assessment Notice?

RO MANANGHAYA
A. Its Mericca [sic] F. Noble.

JUSTICE CASTAÑEDA:
So it is a different person.

RO MANANGHAYA:
A. But it's [sic] the same signature.

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66 Referred to as Merilla F. Joble in Exhibit "R-11".

ATTY. GALLEGO:
Objection, Your Honors. We move that the portion of witness' testimony "it's the same signature" be stricken off.

ATTY. UMIPIG-LABUCAY:
Your Honors. May I proceed?

JUSTICE CASTAÑEDA:
Proceed.

ATTY. UMIPIG-LABUCAY:
Q. Ms. Witness, can you tell this Honorable Court if the person who received the Letter of Authority and the subpoena duces tecum are one and the same person?

ATTY. GALLEGO:
Objection, the witness is incompetent.

RO MANANGHAYA
A. It's the same person.

ATTY. GALLEGO:
To answer the question, the witness already testified that...

JUSTICE CASTAÑEDA:
Sustained.

ATTY. GALLEGO:
Thank you, Your Honors.

ATTY. CAMPOS:
Your Honor, may I be allowed to conduct my re-direct, Your Honors, just to lay down the basis, Your Honors?

JUSTICE CASTAÑEDA:
All right.

ATTY. CAMPOS:
What we are trying to point out here, Your Honors, before I proceed with my questions is that, there are two (2) different address stated in the Letter of Authority and subpoena duces tecum but they are both received by a person, Merica Flores, Your Honors. And I will be going to compare the Letter of Authority and the subpoena duces tecum, Your Honors.

JUSTICE CASTAÑEDA:
But they have different names.

ATTY. CAMPOS:
No, Your Honors. The one that has a different name is the Assessment Notice, Your Honors, with the name bearing Mericca [sic] Flores, with a different surname. In so far as the subpoena duces tecum and the Letter of Authority, Your

Honors , there appears a name and surname, the same, Your Honors.

JUSTICE CASTAÑEDA:
All right.

ATTY. CAMPOS:
With the same designation, HR Manager or Accounting Manager.

JUSTICE CASTAÑEDA:
Well the document is the best evidence itself.

ATYY. GALLEGO:
For the record, Your Honors, I would like, for you to compare the Letter of Authority addressed to Finez Alberto Ballares with address at 140 N. Domingo St. Cubao, Quezon City 1109. It was received herein by one Mericca [sic] Flores, HR Manager. Please compare it with the subpoena duces tecum addressed [sic] to Alberto Finez.

JUSTICE CASTAÑEDA:
Do you know who Mericca [sic] Flores is? Do you personally know who Mericca [sic] Flores is?

RO MANAGHAYA:
No.

JUSTICE CASTAÑEDA:
That answers the competence of your witness."[67] (Boldfacing supplied)

The PCL and FNBS, on the other hand, were sent via registered mail to petitioner at Perez, Meycauayan, Bulacan.

In *Protector's Services, Inc. vs. Court of Appeals,*[68] it was ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court,[69] that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts

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[67] TSN of the August 15, 2018 Hearing, pp. 22-25.
[68] G.R. No. 118176, April 12, 2000.
[69] Section 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx xxx xxx
(v) That a letter duly directed and mailed was received in the regular course of the mail; xxx

the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[70]

The presumption that a letter duly directed and mailed was received in the regular course of the mail is not applicable in this instance considering that the PCL and FNBS were not properly addressed and petitioner directly denies receipt thereof.

Even if it is conceded that the registry receipts prove the fact of mailing, respondent still fell short in establishing actual receipt of the assessment by petitioner.

Further, respondent's issuance of the PCL and FNBS violated petitioner's right to due process because no valid notice of assessment was sent to him. 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.[71] In the instant case, petitioner was not properly informed of the basis of his tax liabilities considering that he did not receive the assessment notices. 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.[72]

Considering that respondent failed to prove actual receipt by petitioner of the PAN and FLDs and Assessment Notice, in accordance with RR No. 12-99, as amended, the PCL, FNBS and the resulting WDL are void for having been issued in violation of petitioner's right to due process.

To be sure, the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. The eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[73] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[74] relative to the utmost importance

[70] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.
[71] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.
[72] *Id.*
[73] G.R. Nos. 201398-99, October 3, 2018.
[74] G.R. Nos. 201418-19, October 3, 2018.

of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process**.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> xxx xxx xxx
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99**.
>
> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:
>
>> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
>
> In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.
>
> In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer

was **deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice** as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

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

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed.**

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. Xxx" (Citations omitted; boldfacing supplied)

To reiterate, it is not simply a question of whether the PAN, FLDs and Assessment Notice were sent to petitioner by respondents, but it is imperative that the taxpayer **actually received** said tax assessment notices.

State differently, it was incumbent upon respondent to prove by preponderant evidence that the PAN, FLDs and Assessment Notice were actually received by petitioner. Unfortunately, respondent failed to discharge this burden.

In view of the respondent's failure to prove that PAN, FLDs and Assessment Notice were actually received by petitioner, there is no valid assessment which could be serve as a legitimate subject of collection under the WDL. Consequently, the WDL, which is the subject of the present Petition for Review, must perforce be cancelled and set aside.

WHEREFORE, in view of the foregoing disquisitions, the Petition for Review filed by petitioner Alberto B. Finez is hereby **GRANTED**. Formal Letter of Demand No. 34503 with Assessment Notice No. 34503, Formal Letter of Demand No. 20841, all dated June 8, 2015 and Warrant of Distraint and/or Levy dated September 7, 2017 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice