REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

ONE CYPRESS AGRI-SOLUTION INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9937

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

MAR 07 2023
10:30 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The *Petition for Review* prays that after due hearing, the Court issues:

1. An order lifting the *Warrant of Garnishment* against petitioner, immediately upon hearing of the *Urgent Motion to Lift Warrant of Garnishment* dated July 20, 2018;

2. A *Temporary Restraining Order and/or Writ of Preliminary Injunction* suspending the collection of alleged deficiency taxes in the total amount of ₱63,043,868.59 from petitioner without requiring the latter to deposit the amount sought to be collected or file the required bond immediately upon hearing of the *Urgent Motion for the Suspension of Collection of Tax*; and

3. Judgment declaring the *Warrant of Garnishment* dated July 20, 2018 as void and ordering respondent to cancel the same.[1]

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[1] Statement of the Case, Pre-Trial Order dated June 26, 2020, Docket – Vol. 1, pp. 381 to 382.

THE PARTIES

Petitioner One Cypress Agri-Solution Inc. is a domestic corporation duly registered with the Securities and Exchange Commission.[2] It is registered with the Bureau of Internal Revenue (BIR) with registered address at Unit 301, 4th Floor Prestige Tower, Don Francisco, Ortigas Jr. Road, Ortigas Center, Pasig City.[3]

Respondent Commissioner of Internal Revenue is the chief of the BIR who, under law, is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. He may be served with summons and other legal processes at the BIR National Office Building, BIR Road, Diliman Quezon City.[4]

THE FACTS

Petitioner was subjected to a tax audit or investigation for all internal revenue taxes including documentary stamp tax and other taxes for taxable year 2013 under *Letter of Authority* (LOA) No. LOA-43A-2014-00000944 SN: eLA201100094672 dated October 28, 2014.[5]

On February 7, 2017, petitioner received the *Preliminary Assessment Notice* (PAN) dated January 26, 2017, together with the *Details of Discrepancies*,[6] alleging petitioner's deficiency taxes in the total amount of ₱55,578,713.87, inclusive of the basic taxes, surcharges, interests, and compromise penalties.[7]

Subsequently, on September 7, 2018, petitioner attempted to withdraw the amount of ₱20,000 from its Banco De Oro Saving Account No. 004390027282 from BDO Northbay – Virgo Drive Branch.[8] However, petitioner was then informed by the said bank that its account had been garnished by the BIR, and was given a copy of the *Warrant of Garnishment* dated July 20, 2018.[9] The said *Warrant of Garnishment* stated that there is due from

[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts & Issues* (JSFI) Docket – Vol. 1, pp. 358 to 366.
[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 358.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 359.
[5] Par. 4, Admitted Facts, JSFI, Docket – Vol. 1, p. 359.
[6] Exhibit "P-7", Docket – Vol. 2, pp. 577 to 580.
[7] Par. 5, Admitted Facts, JSFI, Docket – Vol. 1, p. 359; Exhibit "P-6", Docket – Vol. 2, p. 576.
[8] Exhibit "P-4", Docket – Vol. 2, p. 574. Refer also to 11Q/A, Exhibit "P-15", Docket – Vol. 1, pp. 229 to 237, at p. 232.
[9] Exhibit "P-5", Docket – Vol. 2, p. 575. Refer also to 11Q/A and 12Q/A, Exhibit "P-15", Docket – Vol. 1, pp. 229 to 237, at p. 232.

petitioner the total amount of ₱63,043,868.59 as its alleged deficiency income tax and value-added tax (VAT) for the taxable year 2013.[10]

Petitioner filed its *Petition for Review (with Urgent Motions To Lift Warrant of Garnishment and For Suspension of Collection of Tax by the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)* on September 27, 2018.[11]

On November 6, 2018, respondent filed his *Comment/Opposition (Petitioner's Urgent Motion to Lift Warrant of Garnishment and for Suspension of Collection of Taxes by the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction).*[12]

At the hearing held on November 13, 2018, the Court granted petitioner's motion to withdraw the *Urgent Motion to Lift Warrant of Garnishment and for Suspension of Collection of Tax by the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.*[13] The Pre-Trial Conference was then initially set on March 19, 2019.[14]

Respondent posted his *Answer* on December 2, 2018.[15] Thereafter, on February 11, 2019, he transmitted the *BIR Records* for this case.[16]

In the Resolution dated March 15, 2019,[17] the parties were ordered to immediately proceed and to personally appear, or through authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA). However, the parties failed to come into an agreement.[18] Thus, in the Resolution dated May 9, 2019,[19] the Court set the Pre-Trial Conference on August 20, 2019, and ordered the parties to submit their respective pre-trial briefs.

However, pursuant to the Order dated August 6, 2019, the Pre-Trial Conference was cancelled, and again reset to October 22, 2019.[20] On the said date, petitioner's counsel moved that he be allowed to file an *Amended Petition for Review* in order to seek a more comprehensive relief from the Court.[21] Over the objection of respondent's counsel, and in the interest of liberality pursuant

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[10] Exhibit "P-5", Docket – Vol. 2, p. 575.
[11] Docket – Vol. 1, pp. 11 to 26.
[12] Docket – Vol. 1, pp. 90 to 95.
[13] Minutes of the hearing held on, and Order dated, November 13, 2018, Docket – Vol. 1, pp. 103 to 105.
[14] *Id.*; Notice of Pre-Trial Conference dated November 16, 2018, Docket – Vol. 1, pp. 106 to 107.
[15] Docket – Vol. 1, pp. 108 to 114.
[16] Compliance dated February 11, 2019, Docket – Vol. 1, pp. 119 to 120.
[17] Docket – Vol. 1, pp. 124 to 125.
[18] Mediator's Report dated May 2, 2019, Docket – Vol. 1, p. 126.
[19] Docket – Vol. 1, pp. 134 to 135.
[20] Order dated August 6, 2019, Docket – Vol. 1, p. 136.
[21] Minutes of the hearing held on, and Order dated, October 22, 2019, Docket – Vol. 1, pp. 147 and 149 to 150, respectively.

to the rules of Pre-Trial wherein it is considered whether there is a desirability to amend petition or pleadings, the motion was granted by the Court.[22] The latter then cancelled the Pre-Trial Conference, and further reset the same to February 18, 2020.[23]

Respondent's Pre-Trial Brief was filed on October 16, 2019,[24] and *Petitioner's Pre-Trial Brief* was submitted on October 18, 2019.[25]

The *Amended Petition for Review* was filed on November 11, 2019.[26]

On November 20, 2019, respondent filed his *Amended Answer*,[27] interposing the following special and affirmative defenses, to wit:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

There exists a presumption that the mail matter was received in the regular course of mail.

10. There exists a presumption that the mail matter was received in the regular course of mail provided that the letter was properly addressed with postage prepaid and it was mailed. The Supreme Court held in the case of *Protector's Services, Inc. vs. Court of Appeals, et al.*, to wit:

> 'The facts to be proved to raised this presumption are (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails.'

11. In this case, the Final Assessment Notice dated February 28, 2018 was properly addressed to Petitioner's registered address at Unit 401 Prestige Tower, Don Francisco, Ortigas Jr. Rd., Ortigas Center, Pasig City, with postpaid prepaid and was mailed accordingly on 01 March 2017.

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[22] *Id.*
[23] *Id.*
[24] Docket – Vol. 1, pp. 137 to 139.
[25] Docket – Vol. 1, pp. 141 to 145.
[26] Docket – Vol. 1, pp. 151 to 168.
[27] Docket – Vol. 1, pp. 219 to 225.

The Petitioner is in bad faith in claiming that they did not receive the Final Assessment Notice (FAN) mailed to their registered address.

12. Petitioner alleged that in 07 February 2017, they had received the Preliminary Assessment Notice (PAN) dated 26 January 2017, which was mailed to the same registered address of the Petitioner through registered mail. Now petitioner claims that they did not receive the Final Assessment Notice (FAN) which was also mailed to the same registered address of the Petitioner through registered mail on 01 March 2017, barely one (1) month after the mailing of the PAN. It bears stressing that the Petitioner never changed its registered address and until now, as alleged in paragraph 4 of their Petition for Review, the Petitioner still holds office at Unit 401 Prestige Tower, Don Francisco, Ortigas Jr. Rd., Ortigas Center, Pasig City.

13. Records further show that when the Revenue Officers authorized to conduct the tax audit attempted to personally serve the PAN and FAN to the said address, on 26 January 2018 and 01 March 2018, respectively, the Petitioner can no longer be located on its registered address, thus they opted to serve the said Assessment Notices through registered mail.

14. Moreover, when the Petitioner was issued with a Subpoena Duces Tecum on 22 April 2015 for the submission of its books of accounts and other accounting records, the Revenue Officers authorized to serve the Subpoena failed to personally serve it to the Petitioner's registered place of business since it was chained and padlocked and the building receptionist and administrator had no information about the Petitioner. Hence, it was served through registered mail. Thus, when the Petitioner failed to appear on 18 May 2018 and comply with the subpoena duces tecum, a criminal complaint for violation of Section 266 of the National Internal Revenue code of 1997, as amended (NIRC) for failure to obey summons was filed against Petitioner.

Perusal of the tax docket of the Petitioner indicated that they have sent a Notice of Change of Address to the Office of the Prosecutor for the above-mentioned criminal case, stating therein that Kristine Bensurto, President of One Cypress Agri-Solution Inc., holds office with Silver Dragon Holdings, Inc. at Unit 1401 A 4th Flr., Corporate Center, Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City.

15. The Certification from the Philippine Postal Corporation – Pasig Central Post Office indicates that based on their records, the FAN with Registered Receipt No. RD 719 391 934 ZZ addressed to the Petitioner's registered address at Unit 401 Prestige Tower, Don Francisco, Ortigas Jr. Rd., Ortigas Center, Pasig City was returned to sender on 08 March 2017 for the reason that the addressee has moved out or transferred its address.

16. However, the Petitioner has neither filed a transfer of registration with the Bureau of Internal Revenue (BIR) nor notified the Bureau of its change of address. Section 236 of the NIRC provides, to wit:

> 'Sec. 236. Registration Requirements. –
>
> xxx
>
> The registration shall contain the taxpayer's name, style, place of residence, business and such other information as may be prescribed by the Commissioner in the form prescribed therefor.
>
> A person maintaining a head office, branch or facility shall register with the Revenue District Officer having jurisdiction over the head office, brand or facility.
>
> xxx
>
> D) Transfer of Registration. – In case a registered person decides to transfer his place of business or his head office or branches, **it shall be his duty to update his registration status** by filing an application for registration information update in the form prescribed therefor.
>
> (E) Other Updates. – Any person registered in accordance with this Section shall, **whenever applicable, update his registration information with the Revenue District Office where he is registered, specifying therein the change in type and other taxpayer details.**' *(Emphasis supplied)*

17. Thus, Petitioner is in bad faith in claiming that it never received the Final Assessment Notice for taxable year 2013, when they never notified the BIR of its change or moving out of its registered address. As stated in the preceding paragraph, it shall be the taxpayer's duty to update its registration of specifying any change in the details therein.

18. Records further show that the Preliminary Assessment Notice (PAN) as well as the Final Assessment Notice (FAN) were not only sent to the registered address of the Petitioner but also to the alternative address of Kristine Bensurto (President) at Unit 1401 A 4th Flr., Corporate Center, Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City and to the Petitioner's incorporators, namely Melissandre D. Salazar (Corporate Secretary), Bruce C. Salazar (General Manager), Jackelyn Cheng (Treasurer), and Ernesto Cheng at their respective addresses as indicated in their General Information Sheet. Thus, indicating that the Revenue Officers duly complied with their duty to properly notify and serve the Petitioner of the BIR's assessment.

19. Petitioner cannot now come to the court seeking relief from the assessments made by the BIR <u>and for the declaration thereof as void for the alleged failure to observe Petitioner's right to due process and</u> the lifting of the warrant of garnishment for violation of due process when the Petitioner on their part failed to provide <u>any</u> change in their registered address which is an essential detail in serving due process. The Supreme Court held in the case of *Department Public Works and Highways vs. Quiwa*, to wit:

> 'Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equality must be free from fault. And he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter. xxx One who seeks equity must do equity, and one who comes into equity must come with clean hands.'

20. Thus, the Respondent cannot be faulted that the Petitioner did not receive the FAN. The Respondent has the right to assume the registered address reflected on the BIR Integrated Tax System of the registration of the Petitioner is still their current registered address. Furthermore, the taxpayer status indicated therein states an 'Active' status of the Petitioner's registration. The Petitioner cannot expect the impossible from the Respondent

when no update in the change of address, as required by the law, was made when they moved out of the said office.

21. The law bestows upon a public official the presumption of regularity in the discharge of one's official duties and functions. The Petitioner cannot hide in their allegation of violation of due process when they were the ones who have caused it. Thus, the allegation of the Petitioner regarding the violation of due process due to the absence of FAN is without basis.

29. In the case at bar, the act of serving the FAN and findings of the Revenue Officers shall stand in the absence of proof of any irregularities in the performance of their duties.

30. The Revenue Officers act of serving the assessment on Petitioner's registered address enjoys the presumption of correctness and regularity. The burden of proof to refute the validity and correctness of the service of said assessment issued rests on the Petitioner. In this case, Petitioner failed to substantiate their claims by providing the necessary supporting documents as evidence to their claim.

31. Furthermore, it is important to note that taxes are important because they are the lifeblood of the government and so should be collected without unnecessary hindrance. The Supreme Court held in the case of *National Power Corporation vs. City of Cabanatuan*, to wit:

> 'Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.'"

Petitioner's *Amended Pre-Trial Brief* and *Respondent's Amended Pre-Trial Brief* were both filed on January 17, 2020.[28] As previously scheduled, the Pre-trial Conference was conducted on February 18, 2020.[29]

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[28] Docket – Vol. 1, pp. 285 to 291 and 292 to 296, respectively.
[29] Minutes of the hearing held on, and Order dated, February 18, 2020, Docket – Vol. 1, pp. 355 to 357.

On March 9, 2020, the parties submitted their *Joint Stipulation of Facts & Issues*,[30] which was admitted and approved by the Court in the Resolution dated March 13, 2020,[31] thereby deeming the termination of the Pre-Trial. Thereafter, the Court then issued the Pre-Trial Order dated June 26, 2020.[32]

As trial ensued, petitioner presented its documentary and testimonial evidence. It offered the testimony of Ms. Angeline Y. Alvaro,[33] petitioner's outsourced administrative officer and bookkeeper.

Petitioner filed its *Formal Offer of Evidence with Manifestation* on September 3, 2020.[34] Respondent then filed his *Comment [Re: Petitioner's Formal Offer of Evidence]* on September 14, 2020.[35] In the Resolution dated October 2, 2020,[36] the Court admitted Exhibits "P-15" and "P-15-1", and denied Exhibits "P-1", "P-2", "P-3", "P-4", "P-4-A", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", and "P-14", for failure to submit the duly marked exhibits.

On December 3, 2020, petitioner filed its *Motion For Partial Reconsideration (of the Resolution dated 2 October 2020) With Motion To Admit Marked Exhibits.*[37] Respondent failed to file his comment thereon.[38]

Respondent likewise presented his documentary and testimonial evidence. He offered the testimonies of the following Revenue Officers, namely: (1) Mr. Placido Muñoz,[39] (2) Mr. Benedicto Augusto M. Cruz,[40] (3) Mr. Norlika B. Datu-Haron,[41] and (4) Mr. Edilberto R. Nacnac.[42]

Respondent's Formal Offer of Evidence was filed on December 14, 2020.[43] Petitioner then filed its *Comment/Opposition (To Respondent's Formal Offer of Evidence dated 11 December 2020)* on December 21, 2020.[44]

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[30] Docket – Vol. 1, pp. 358 to 366.
[31] Docket – Vol. 1, p. 377.
[32] Docket – Vol. 1, pp. 380 to 389.
[33] Exhibit "P-15", Docket – Vol. 1, pp. 229 to 237; Minutes of the hearing held on, and Order dated, August 20, 2020, Docket – Vol. 1, pp. 398 to 400.
[34] Docket – Vol. 1, pp. 403 to 410.
[35] Docket – Vol. 1, pp. 479 to 480.
[36] Docket – Vol. 1, pp. 482 to 483.
[37] Docket – Vol. 1, pp. 539 to 543.
[38] Records Verification Report dated January 25, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 632.
[39] Exhibit "R-48", Docket – Vol. 1, pp. 302 to 306; Minutes of the hearing held on, and Order dated, November 17, 2020, Docket – Vol. 1, pp. 536 to 538.
[40] Exhibit "R-49", Docket – Vol. 1, pp. 332 to 336; Minutes of the hearing held on, and Order dated, November 17, 2020, Docket – Vol. 1, pp. 536 to 538.
[41] Exhibit "R-51", Docket – Vol. 1, pp. 321 to 325; Minutes of the hearing held on, and Order dated, December 3, 2020, Docket – Vol. 1, pp. 611 to 613.
[42] Exhibit "R-50", Docket – Vol. 1, pp. 486 to 495; Minutes of the hearing held on, and Order dated, December 3, 2020, Docket – Vol. 1, pp. 611 to 613.
[43] Docket – Vol. 2, pp. 614 to 625.

In the Resolution dated February 10, 2021,[45] the Court:

(1) partially granted petitioner's *Motion For Partial Reconsideration (of the Resolution dated 2 October 2020)*;
(2) granted petitioner's *Motion To Admit Marked Exhibits*;
(3) admitted Exhibits "P-3", "P-4", "P-4-A", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", and "P-14"; and
(4) admitted respondent's offered exhibits; and
(5) denied admission of: (i) Exhibit "R-8", for failure to mark and identify; and (ii) Exhibit "R-47", for failure to submit the original for comparison.

Petitioner posted its *Memorandum* on May 24, 2021.[46] Respondent, however, failed to file his memorandum.[47]

On May 5, 2022, the case was deemed submitted for decision.[48]

THE ISSUES

The parties stipulated the following issues for this Court's resolution, to wit:

> "6. Whether or not petitioner was denied due process in the issuance of the FAN and Warrant of Garnishment; and
>
> 7. Whether or not the petitioner is liable for deficiency taxes for the taxable year 2013."[49]

Petitioner's arguments:

Petitioner argues that respondent failed to prove that petitioner was duly served and actually received the purported *Final Assessment Notice* (FAN) and *Formal Letter of Demand* (FLD) containing its alleged deficiency assessments; that having failed to prove that the FAN and FLD containing petitioner's alleged deficiency assessments for deficiency income tax and VAT for the taxable year 2013 were actually received by petitioner, the said assessment notices for the

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[44] Docket – Vol. 2, pp. 626 to 629.
[45] Docket – Vol. 2, pp. 634 to 637.
[46] Docket – Vol. 2, pp. 638 to 661.
[47] Records Verification Report dated April 26, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 634.
[48] Resolution dated May 5, 2022, Docket – Vol. 2, p. 636.
[49] Stipulated Issues, JSFI, Docket – Vol. 1, p. 359.

alleged deficiency VAT and income tax for taxable year 2013 are null and void for failure of the respondent to accord due process to petitioner; that the *Assessment Notices* for deficiency income tax and VAT were hastily prepared and signed by respondent notwithstanding that petitioner is still entitled to file a Reply to the PAN within fifteen (15) days from receipt thereof—showing a clear intention on the part of respondent to deny petitioner its right to due process in the issuance of the said assessment notices; that assuming *arguendo* that the *Assessment Notices* were actually received by petitioner, respondent failed to prove that fraud existed, as would justify the ten-year prescriptive period in the assessment of the alleged deficiency VAT for the taxable year 2013; that assuming *arguendo* that the *Assessment Notices* were actually received by petitioner (they were not), respondent is already barred by the three-year prescriptive period from issuing the *Assessment Notice* No. 043A-B166-13 for deficiency VAT for the taxable year 2013; and that respondent's *Warrant of Garnishment* dated July 20, 2018 is null and void, the same being the fruit of an invalid assessment.

Respondent's counter-arguments:

Respondent contends that there exists a presumption that the mail matter was received in the regular course of mail; and that the petitioner is in bad faith in claiming that they did not receive the FAN mailed to their registered address.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

Respondent argues, *inter alia*, as follows:

> "11. In this case, the Final Assessment Notice dated February 28, 2018 was properly addressed to the Petitioner's registered address at Unit 401 Prestige Tower, Don Francisco, Ortigas Jr. Rd., Ortigas Center, Pasig City, with postpaid prepaid and was mailed accordingly on 01 March 2017.
>
> xxx xxx xxx
>
> 17. Thus, Petitioner is in bad faith in claiming that it never received the Final Assessment Notice for taxable year 2013, when they never notified the BIR of its change or moving out of its registered address. As stated in the preceding paragraph, it shall be the taxpayer's duty to update its registration of specifying any change in the details therein.

18. Records further show that the Preliminary Assessment Notice (PAN) as well as the Final Assessment Notice (FAN) were not only sent to the registered address of the Petitioner but also to the alternative address of Kristine Bensurto (President) at Unit 1401 A 14th Flr., Corporate Center, Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City and to the Petitioner's incorporators, namely Melissande D. Salazar (Corporate Secretary), Bruce C. Salazar (General Manager), Jackelyn Cheng (Treasurer), and Ernesto Cheng at their respective addresses as indicated in their General Information Sheet. Thus, indicating that the Revenue Officers duly complied with their duty to properly notify and serve the Petitioner of the BIR's assessment."[50]

This Court disagrees with respondent.

Section 3.1.6 of Revenue Regulations (RR) No. 12-99,[51] as amended by RR No. 18-2013,[52] reads, in part, 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:
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> xxx xxx xxx
>
> 3.1.6 ***Modes of Service.*** – **The notice** (PAN/**FLD/FAN**/FDDA) **to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**
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> xxx xxx xxx
>
> (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

[50] Pars. 11, 17 and 18, Docket – Vol. 1, pp. 220 to 221, and 222 to 223, respectively.
[51] SUBJECT: 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
[52] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

> 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.**
>
> xxx xxx xxx." *(Emphases and underscoring added)*

Based on the foregoing provisions, one of the modes of service of the FLD and FAN is by service through registered mail. As for such mode of service, the same must be made by sending the said notices *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. Furthermore, it is required that the "[t]*he server shall accomplish the bottom portion of the notice*" and *"shall also make a written report under oath before a Notary Public or any person authorized to administer oath*[s] *under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information."*

Also, it is clear that the service by registered mail must be made to the "*registered or known address of the party*". Such being the case, for the purpose of such mode of service, it is immaterial whether the concerned taxpayer notified the BIR of its change of address, since the BIR has the option to choose between the "*registered*" address or the "*known*" address. Thus, at this juncture, We rule that petitioner is not in bad faith in claiming that it never received the FAN for taxable year 2013, contrary to respondent's argument.

In addition, 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, <u>in fact</u>, received by the addressee.[53]

Considering that petitioner directly denies receipt of the subject FLD and FAN, the burden was shifted to respondent to prove that the same were indeed received by petitioner or by its authorized representative.

To prove that the FAN and FLD with *Details of Discrepancies*, all dated February 28, 2017, were served to petitioner, through registered mail, respondent offered the following exhibits,[54] to wit:

EXHIBITS	DESCRIPTION	PURPOSE
Exhibit "R-19"	Memorandum of Assignment to RO Placido Muñoz • Attached to the BIR records of the case (Page 167)	1. To prove that RO Placido Muñoz was authorized to examine the books of accounts and other accounting records of petitioner for taxable year 2013. 2. To prove RO Placido Muñoz was authorized to serve the FAN and FLD to petitioner and its responsible officers and incorporators. 3. To prove the factual and legal basis of the deficiency tax assessment against Petitioner. 4. To prove that the FAN and FLD were served to Petitioner and its responsible officers and incorporators. 5. To prove that petitioner was accorded due process.
Exhibit "R-20"	FLD with Details of Discrepancies • Attached to the BIR records of the case (Page 141 - 144)	
Exhibit "R-21"	FAN – Income Tax • Attached to the BIR records of the case (Page 146)	
Exhibit "R-21-A"	FAN – VAT • Attached to the BIR records of the case (Page 145)	
Exhibit "R-21-B"	Registry Receipt No. RD 719 391 934 ZZ • Attached to the BIR records of the case (Page 145)	
Exhibit "R-21-C"	Registry Receipt No. RD 719 391 925 ZZ • Attached to the BIR records of the case (Page 146)	
Exhibits "R-22" and "R-22-A"	Letter dated March 1, 2017 to Ms. Mellisande D. Salazar and Registry Receipt No. RD 726 869 795 ZZ • Attached to the BIR records of the case (Page 166)	
Exhibits "R-23" and "R-23-A"	Letter dated March 1, 2017 to Mr. Bruce C. Salazar and Registry Receipt No. RD 726 869 800 ZZ • Attached to the BIR records of the case (Page 165)	
Exhibits "R-24" and "R-24-A"	Letter dated March 1, 2017 to Ms. Jackelyn Cheng and Registry Receipt No. RD 726 869 813 ZZ • Attached to the BIR records of	

[53] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[54] *Respondent's Formal Offer of Evidence*, Docket – Vol. 2, pp. 614 to 625, at pp. 618 to 619.

	the case (Page 164)	
Exhibits "R-25" and "R-25-A"	Letter dated March 1, 2017 to Mr. Ernesto Cheng and Registry Receipt No. RD 726 869 901 ZZ • Attached to the BIR records of the case (Page 163)	

It can, thus, be inferred from the foregoing that the only evidence adduced by respondent in proving the fact of mailing are the copies of the corresponding Registry Receipts supposedly issued by the Postmaster for the FANs for income tax and VAT, and for the letters addressed to the responsible officers and incorporators of petitioner, enclosing therewith copies of the said FANs.

Unfortunately, the said evidence hardly suffice to prove that the said notices were indeed served on, and received by, petitioner or by any of its authorized representative/s, pursuant to the above-mentioned rules. The said Registry Receipts merely proved the fact of mailing,[55] and nothing more. The glaring fact remains that nowhere can it be seen from the same evidence that the subject FANs and FLD were actually served on, and received by, petitioner or by any of its authorized representative. In other words, the fact of receipt by petitioner or its authorized representative is not indicative in the said Registry Receipts.

In *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*,[56] the Supreme Court ruled as follows:

> "As ruled by the CTA *En Banc,* the **CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives.** It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.
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> xxx xxx xxx
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> **The Court sees no reason to set aside the findings of the CTA *En Banc.*** 'It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very

[55] Refer to *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.,* supra.
[56] G.R. No. 240729, August 24, 2020.

> nature of its functions, has accordingly developed an exclusive expertise on the resolution [of tax problems,] unless there has been an abuse or improvident exercise of authority.' xxx." *(Emphases added)*

Based on the foregoing jurisprudential pronouncements, the mere presentation of registry receipts is not sufficient. Moreover, it is also required that the said registry receipts must be signed by the concerned taxpayer's duly authorized representative, and that the signatures are identified and authenticated.

It is noteworthy that no signature whatsoever appears on the subject Registry Receipts. Correspondingly, the fact of service on, and receipt by, petitioner of the subject FANs and FLD were never established by respondent.

Moreover, it must be pointed out that a closer examination of the same Registry Receipts reveals that these documents are not accompanied by an *"instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered"*, and that the same documents do not contain any identifiable details of the transaction, as required under the aforequoted Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013. Furthermore, there is no showing that anent the subject FANs and FLD, a written report under oath was made, setting forth the manner, place and date of service, the name of the person who received the same, and such other relevant information, as likewise mandated under the same Section 3.1.6. Such being the case, it is apparent that respondent neglected to show compliance with the requirements under the BIR's own rules and regulations, and thus, has failed to prove that petitioner actually received the said notices.

Apropos, an assessment contains not only a computation of tax liabilities, but also a demand for payment within the prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine remedies thereon, **due process requires that it must be <u>served on and received</u> by the taxpayer.**[57]

Correspondingly, due process was not accorded to petitioner in the issuance of the subject FANs and FLD, in violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997, and Section 3.1 of RR No. 12-99, as amended by RR No. 18-2013, to wit:

<u>Section 228, NIRC of 1997:</u>

[57] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corp., et al.*, G.R. No. 128315, June 29, 1999.

"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**: xxx

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx." *(Emphases added)*

<u>Section 3.1, RR No. 12-99, as amended</u>:

"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:

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).

3.1.4 *Disputed Assessment.* – **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN <u>within thirty (30) days from date of receipt thereof</u>.** xxx." *(Emphases and underscoring added)*

Based on the foregoing provisions, part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer be informed in writing of the law and the facts upon which the assessment was made, and

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that the same taxpayer be given the opportunity to respond and contest the FLD and FAN.

Since these due process requirements were not fulfilled, for failure of respondent to properly serve the FANs and FLD dated February 28, 2017 to petitioner, the subject tax assessments are null and void, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[58] 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 is 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 submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider 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.**" *(Emphases and underscoring added)*

In sum, considering that respondent was unable to present substantial evidence that the subject FANs and FLD were properly served on, and received by, petitioner or by its authorized representative/s, there is no valid assessment to speak of in this case. Relative thereto, it must be emphasized that the failure of respondent to prove receipt of the assessment by petitioner would necessarily lead to the conclusion that no assessment was issued.[59]

Consequently, in view of the violation of petitioner's right to due process provided under Section 228 of the NIRC of 1997, and RR No. 12-99, as amended by RR No. 18-13, the subject FANs and FLD are void, and petitioner cannot be held liable thereunder. Pertinently, the subject deficiency tax assessments bear no valid fruit,[60] and respondent's *Warrant of Garnishment* dated July 20, 2018 must not be given any effect.

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[58] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[59] *Commissioner of Internal Revenue vs. Bank of the Philippine Island,* G.R. No. 224327, June 11, 2018.
[60] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.,* G.R. Nos. 215534 and 215557, April 18, 2016.

As a corollary, it must be emphasized that tax collection must be **preceded by a valid assessment** to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence.[61] Considering that the subject FANs and FLD are void, the said *Warrant of Garnishment* dated July 20, 2018 cannot be said to have been preceded by valid assessments, and thus, cannot be validly enforced against petitioner.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent's *Warrant of Garnishment* dated July 20, 2018 is **LIFTED** and **SET ASIDE**.

Moreover, for being void, the deficiency income tax and VAT assessments issued against petitioner, in in the total amount of ₱63,043,868.59, for taxable year 2013, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

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.

ERLINDA P. UY
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice