**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA EB NO. 2914** (CTA CASE NO. 9508) |
| | Present: |
| - versus - | **RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.* |
| **JTKC LAND, INC.,** *Respondent.* | Promulgated: FEB 26 2026 11:15am |

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## DECISION

***ANGELES, J.:***

Before the Court of Tax Appeals *En Banc* (CTA *En Banc*) is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (Petitioner) on May 9, 2024 seeking to reverse and set aside the October 18, 2023 Decision[2] (Assailed Decision) of the Court of Tax Appeals Special Third Division (CTA Division) in CTA Case No. 9508 entitled, *JTKC Land, Inc. v. Commissioner of Internal Revenue.* In sum, the CTA Division declared as null and void the Formal Letter of Demand with corresponding Final Assessment Notices (FLD/FAN), Final Decision on Disputed Assessment (FDDA), Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) issued against petitioner; and cancelled and set aside the deficiency Value-Added Tax (VAT) and creditable withholding tax (CWT) assessments

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[1] EB Docket, pp. 1 to 6.

[2] EB Docket, pp. 13 to 33, Penned by Associate Justice Maria Rowena Modesto-San Pedro, and concurred by Associate Justice Ma. Belen M. Ringpis-Liban.

for the taxable period from January 01, 2012 to December 31, 2012 in the aggregate amount of Twenty-Two Million Five Hundred Three Thousand Ten Pesos and Seventy-Seven Centavos (Php22,503,010.77).

## THE PARTIES

Petitioner is the Commissioner (CIR) of the Bureau of Internal Revenue (BIR), charged with the administration and enforcement of national internal revenue laws, jurisdiction to decide on disputed assessments, and with the authority to administer all other laws pertaining to internal revenue taxes.[3]

Respondent, on the other hand, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at G/F Amorsolo Mansion, 130 Amorsolo St., San Lorenzo Village, Makati City.[4]

## THE FACTS

The following are the relevant facts as found and narrated by the CTA Division in the Assailed Decision:[5]

> Respondent [herein petitioner] issued a Letter of Authority ("LOA") No. 046-2013-00000275, dated 18 October 2013, against petitioner [herein respondent] for a tax investigation covering the taxable period from 1 January 2012 to 31 December 2012. In the said LOA, revenue officer ("RO") Jezzebele Bercasio and group supervisor ("GS") Marinelia German were authorized to audit and examine petitioner's [herein respondent's] books of accounts and other accounting records for the said taxable period to determine all types of deficiency internal revenue taxes, including documentary stamp tax ("DST"). This was received by petitioner [herein respondent] on 22 October 2013.
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> Following the examination conducted by RO Bercasio and GS German, they recommended the issuance of a Preliminary Assessment Notice ("PAN") against petitioner [herein respondent]. In the Memorandum the ROs prepared, they noted that the BIR's system showed petitioner's [herein respondent's] registered business address at "Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal." Despite this, the ROs admitted that they continued

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3 Par. 5, Facts, *Petition for Review*, EB Docket, p. 2.
4 Par. 6, Facts, *Petition for Review*, EB Docket, p. 2.
5 Division Docket, pp. 2289 to 2309.

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sending all notices which are due to petitioner [herein respondent] at JTKC Centre, 2155 Pasong Tamo, Makati City.

Thereafter, on 29 December 2015, a PAN was issued against petitioner [herein respondent] and sent by registered mail on 29 December 2015 to petitioner's [herein respondent's] alleged address at "Winstone Cmpd. Felix Ave., Sto. Domingo, Cainta, Rizal." Petitioner [herein respondent] denies receipt of such PAN, highlighting the actual envelope containing the copy of said PAN sent by registered mail to the aforementioned address, which was returned to sender (i.e., respondent) as petitioner [herein respondent] had already "Moved Out" of said address.

On 15 January 2016, a Formal Letter of Demand ("FLD") with corresponding Final Assessment Notices ("FAN") was issued against petitioner [herein respondent], finding it liable for deficiency income tax, VAT, expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), CWT, and compromise penalty. The FLD/FAN was served upon petitioner [herein respondent] personally, and petitioner's [herein respondent's] employee-accountant, Irene J. Buban, received the same on 15 January 2016.

On 25 January 2016, petitioner [herein respondent], through Ms. Buban, requested a reinvestigation of the assessment contained in the FLD/FAN. Petitioner [herein respondent] reiterated this request for reinvestigation through a Letter, dated 11 February 2016. However, in a Letter, dated 17 March 2016, respondent [herein petitioner] denied petitioner's [herein respondent's] request for reinvestigation and noted that the assessment had already become final and executory due to petitioner's [herein respondent's] failure to timely file a valid Protest to the FLD/FAN. This Letter was sent by registered mail to petitioner's [herein respondent's] alleged business address at "Winstone Cmpd. Felix Ave., Sto. Domingo, Cainta, Rizal." Accordingly, this Letter was similarly returned to its sender.

On 22 April 2016, petitioner [herein respondent], through Ms. Buban, sent another Letter, dated 19 April 2016, addressing the assessments contained in the FLD/FAN. Nevertheless, on 28 April 2016, respondent [herein petitioner] issued a Preliminary Collection Letter ("PCL") against petitioner [herein respondent] by registered mail. The PCL was addressed to "Winstone Compound, Felix Ave., Sto. Domingo, Cainta, Rizal."

On 10 May 2016, respondent [herein petitioner] issued a Final Notice Before Seizure ("FNBS") against petitioner [herein respondent] by registered mail. The FNBS was similarly addressed to "Winstone Compound, Felix Ave., Sto. Domingo, Cainta, Rizal." In response to the FNBS, petitioner [herein respondent], through its counsel, Atty. Jose A. Bernas, sent a Letter, dated 31 May 2016. In said Letter, petitioner [herein respondent] alleged that there is no basis for the issuance of an FNBS since respondent [herein petitioner] failed to issue a PAN against petitioner [herein respondent] thereby failing to accord the latter due process in assessment proceedings.

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> On 23 June 2016, petitioner [herein respondent], again, through its counsel, sent a Letter reiterating its Protest to the FLD/FAN. Thus, in a Memorandum, dated 27 June 2016, respondent [herein petitioner] resolved, after admitting that it failed to properly serve a PAN to petitioner [herein respondent], that it is proper to allow petitioner's [herein respondent's] request for reinvestigation.
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> After petitioner [herein respondent] paid the deficiency EWT and WTC assessments, respondent [herein petitioner] issued the FDDA on 18 November 2016 which found petitioner [herein respondent] liable for deficiency VAT and CWT. The FDDA was personally served by respondent [herein petitioner] on 18 November 2016 and was received by petitioner's [herein respondent's] employee, Rose Lozano.
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> Accordingly, petitioner [herein respondent] filed the instant Petition on 19 December 2016.
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> On 24 February 2017, another PCL was served upon petitioner [herein respondent] by registered mail.

Thereafter, trial ensued and the parties presented their respective pieces of documentary and testimonial evidence. On October 25, 2022,[6] the case was submitted for decision.

On October 18, 2023, the Assailed Decision was promulgated. The dispositive portion[7] of which is reproduced below, *viz.*:

> Assailed Decision (October 18, 2023)
>
> **WHEREFORE**, in light of the foregoing considerations, the instant Petition is **GRANTED**. The FLD/FAN, FDDA, PCL and FNBS issued against petitioner [herein respondent] are declared **NULL AND VOID**. Accordingly, the deficiency VAT and CWT assessments issued against petitioner [herein respondent] for the taxable period from 1 January 2012 to 31 December 2012, in the aggregate amount of Php22,503,010.77, inclusive of surcharge, interest and/or compromise penalty are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent [herein petitioner] is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner [herein respondent].
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> **SO ORDERED.**

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[6] Resolution, Division Docket, p. 2275.
[7] Division Docket, pp. 2289 to 2309.

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In sum, the CTA Division ruled in favor of respondent, holding that the failure to prove receipt of the Preliminary Assessment Notice (PAN) rendered the assessment void. Without proof of service, the respondent is deemed not to have received the PAN, thereby violating its right to due process of law.

Subsequently, petitioner, through the Office of the Solicitor General (OSG) and the BIR, received a copy of the Assailed Decision on January 22, 2024 and January 10, 2024, respectively.[8] Thereafter, a *Motion for Reconsideration (Decision dated 18 October 2023)*[9] (MR) was filed by petitioner on January 25, 2024. The CTA Division eventually denied the same in the Assailed Resolution. The dispositive portion[10] of which provides, to wit:

> Assailed Resolution (April 4, 2024)
>
> **FOR [THESE] REASONS,** respondent's [herein petitioner's] Motion for Reconsideration (Decision dated 18 October 2023) is **DENIED** for lack of merit. The assailed Decision, dated October 18, 2023, is hereby **AFFIRMED**.
>
> **SO ORDERED.**

The OSG received a copy of the Assailed Resolution on May 2, 2024, while the BIR received the same on April 24, 2024.[11]

## THE PROCEEDINGS BEFORE THE CTA *EN BANC*

On May 9, 2024, the present *Petition for Review*[12] was filed. In a Resolution[13] dated June 10, 2024, which respondent received on June 11, 2024, the CTA *En Banc* directed the latter to file its comment within ten (10) days from notice. On June 21, 2024, respondent timely filed the *Comment (to Petition for Review dated 07 May 2024)*.[14]

Subsequently, in a Resolution dated July 1, 2024, the Court took note of the comment filed by respondent and referred the case for mediation.[15] However, the parties decided not to have their case

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[8] Notice of Decision, Division Docket, p. 2289.
[9] Division Docket, pp. 2310 to 2315.
[10] Division Docket, p. 2355.
[11] Notice of Resolution, Division Docket, p. 2352.
[12] EB Docket, pp. 1 to 6.
[13] EB Docket, p. 39.
[14] EB Docket, pp. 40 to 67.
[15] Resolution dated July 1, 2024, Docket, p. 68.

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mediated and executed a *No Agreement to Mediate.*[16] Thus, in a Resolution[17] dated November 13, 2024, the Court noted the same and the case was submitted for Decision.

## THE ISSUES[18]

**I. Whether or not Respondent's right to due process was violated by Petitioner.**

**II. Whether or not the Honorable Court erred in cancelling the FLD/FAN, FDDA, PCL and FNBS issued against Respondent for taxable year 2012.**

## THE ARGUMENTS

### *Petitioner's arguments*[19]

Petitioner claims that the right of respondent to due process of law was not violated considering that there was a valid service of the PAN when it was duly served to the latter's business address. Furthermore, it argues that the BIR was not informed of any changes of the registered address of the respondent.

Petitioner stressed that respondent was able to intelligently contest the assessments when the BIR allowed the filing of a request for reinvestigation and considered the explanations contained therein. This eventually resulted in the payment of EWT and WTC deficiencies. Petitioner thus insist that due process is already satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.

For the foregoing reasons, petitioner argues that the CTA Division erred in cancelling the assessments against herein respondent, and in declaring the FLD/FAN, FDDA, PCL and FNBS as null and void.

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[16] EB Docket, p. 69.
[17] EB Docket, p. 80.
[18] Issues, *Petition for Review*, EB Docket, p. 2.
[19] Discussion, *Petition for Review*, EB Docket, pp. 2 to 5.

### *Respondent's counter-arguments*

Respondent, by way of *Comment (to Petition for Review dated 07 May 2024)*,[20] maintains that: 1) the instant *Petition* should be denied for lack of merit; 2) petitioner's allegation on the service of PAN is false; 3) the granting of its Request for Reinvestigation did not cure the due process infringement already committed when it did not serve the PAN during the pre-assessment stage; 4) the period to assess has already lapsed; and 5) non-compliance with the substantial due process in assessing respondent is not a matter of estoppel.

## TIMELINESS OF FILING THE PRESENT APPEAL

### *The present Petition for Review was filed on time*

Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA)[21] provides:

> SEC. 3. *Who may appeal; period to file petition.* —
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Rules of Court, Rule 42, sec. 1a) (Emphasis supplied)*

As provided in the RRCTA, a party adversely affected by a ruling, decision, or resolution of the CTA Division may elevate the matter to the CTA *En Banc* within fifteen (15) days from receipt thereof.

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[20] EB Docket, pp. 40 to 67.

[21] Rules of the Court of Tax Appeals - approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals - approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

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Moreover, the timely filing of a motion for reconsideration or new trial before the CTA Division is a prerequisite before an appeal to the CTA *En Banc* may be made. Jurisprudence dictates that the failure to do so may be a ground for dismissal.[22]

As previously narrated, petitioner received a copy of the Assailed Decision on January 22, 2024.[23] Thereafter, the MR[24] was timely filed on January 25, 2024. The CTA Division eventually denied the same in the Assailed Resolution petitioner received on May 2, 2024.

On May 9, 2024, or seven (7) days from petitioner's receipt of the Assailed Resolution, the present Appeal was filed before this Court.

Following the fifteen (15)-day reglementary period to make an appeal to the CTA *En Banc* as required by the RRCTA, the present *Petition* was timely filed.

We now proceed to rule on the merits of the appeal.

## THE RULING OF THE COURT

The *Petition for Review* must be denied.

At the outset, the Court notes that the present *Petition* is a complete restatement of petitioner's *MR*[25] before the CTA Division. Nonetheless, this Court will afford petitioner the opportunity to review its case and address the arguments raised herein.

Petitioner mainly avers two (2) aspects: that the right of respondent to due process of law was not violated since the PAN was validly served, and that due process was duly afforded to respondent when it was able to intelligently contest the assessments which resulted to the granting of the same and the payment of its deficiencies.

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[22] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201530 & 201680-81, April 19, 2017.
[23] Notice of Decision, Division Docket, p. 2289.
[24] Division Docket, pp. 2310 to 2315.
[25] Division Docket, pp. 2310 to 2315.

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***The CTA Division did not err in cancelling the FLD/FAN, FDDA, PCL and FNBS issued against the respondent***

*Petitioner failed to prove that respondent actually received the PAN*

It is a fundamental and pressing rule that a taxpayer must first be informed of any preliminary tax assessment which the CIR or his duly authorized representative may find against such taxpayer. The law goes on to provide that not only should a taxpayer be plainly informed of such assessment, but the assessment must be in writing and supported by factual and legal bases. Otherwise, the same is void. Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, is instructive on the matter, to wit:

> **CHAPTER III**
> **PROTESTING AN ASSESSMENT, REFUND, ETC.**
>
> **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
>
> **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. *(Emphasis and underscoring supplied)*

Concomitantly, the manner by which a taxpayer may be properly informed or served with such assessment notices is provided in Revenue Regulations No. 18-13 (RR No. 18-13), to wit:[26]

> 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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[26] Amending Certain Sections of Revenue Regulations No. 12-99, Revenue Regulations No. 18-13, November 28, 2013.

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(i) The notice **shall** be served through **personal service** by delivering personally a copy thereof to the party at his *registered* or *known* address or *wherever* he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by **substituted service** or **by mail**.

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

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

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

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

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

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> 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." *(Emphases and italics supplied)*

In sum, the law, rules, and regulations are clear that assessment notices such as a PAN, FAN, or FLD shall first be personally served to the taxpayer. In case such personal service is not practicable, substituted service or service by mail may be resorted to.

In the case at hand, it is apparent that petitioner opted to serve the subject PAN to the registered address of respondent by registered mail. However, there was no showing that there was an attempt to personally serve the same to such registered address and that it has been impracticable. While service by registered mail is a recognized valid mode of service, herein respondent has denied ever receiving the subject PAN.

Jurisprudence emphasized that in utilizing registered mail to serve assessment notices, the fact that it was issued, mailed, or released is insufficient. Essentially, there should be **actual receipt** of the same by the taxpayer – and if the latter disputes or denies the receipt thereof, the burden to prove otherwise by competent evidence is shifted to the BIR.[27] In *Commissioner of Internal Revenue v. GJM Phil. Manufacturing Inc.*[28] (GJM case), the Supreme Court emphasized that not only must a taxpayer be notified of the assessments, the latter must likewise actually receive such notice. If the taxpayer **denies receiving the same**, the **burden of proof is shifted to the BIR to prove otherwise**, *viz.*:

> The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may

[27] *Commissioner of Internal Revenue v. GJM Phil. Manufacturing Inc*, G.R. No. 202695, February 29, 2016.
[28] *Ibid.*

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> or may not be within said period. But **it must be clarified that the rule does not dispense with the requirement that the taxpayer <u>should actually receive the assessment notice</u>**, even beyond the prescriptive period. GJM, however, denies ever having received any FAN.
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> **If the taxpayer denies having received an assessment from the BIR, it then becomes <u>incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.</u>** Here, **the *onus 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.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the <u>Registry return card which would have been signed by the taxpayer or its authorized representative</u>**. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. **While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved.** Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.[29] *(Emphasis, italics, and underscoring supplied)*

Upon careful review of the records of this case, only the following pieces of evidence were offered by the respondent and admitted[30] by this Court. For ease of reference, such is summarized as follows, *viz.*:[31]

| Exhibit | Description |
|---|---|
| R-1 | Letter of Authority No. LOA-046-2013-00000275 |
| R-2 | Revenue Officer's Report on Income tax |
| R-3 | Revenue Officer's Report on VAT |
| R-4 | Revenue Officer's Report on Expanded Withholding Tax |
| R-5 | Revenue Officer's Report on Withholding Tax on Compensation |

[29] G.R. No. 202695, February 29, 2016.
[30] Resolution dated August 02, 2022, Division Docket, pp. 2117 to 2118.
[31] *Respondent's Formal Offer of Evidence,* Division Docket, pp. 2093 to 2097.

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| R-6 | Revenue Officer's Report on Creditable Withholding Tax on Sale of Property |
| R-7 | Revenue Officer's Report on Compromise Penalty |
| R-8 | Memorandum Report addressed to the Regional Director |
| R-9 | Preliminary Assessment Notice with Details of Discrepancies |
| R-9a | Registry Receipt No. 10324 |
| R-10 | Final Assessment Notice, Formal Letter of Demand and Details of Discrepancies with Demand No. 046-B032-12 dated January 15, 2016 |
| R-10a | Registry Receipt No. 853 |
| R-11 | Judicial Affidavit of Revenue Officer (RO) Jezzebelle S. Bercasio |
| R-11a | Signature of RO Jezebelle S. Bercasio |

As may be gleaned from the foregoing and as likewise admitted by the witness for petitioner in her judicial affidavit,[32] the Court observes that with regard to the Letter of Authority (LOA), petitioner failed at its attempt to personally serve the same to respondent's registered address. In its attempt to personally serve the same to respondent's known address at Makati City, the same was then received by respondent's authorized representative, Irene J. Buban, as evidenced by her signed receipt thereof.

However, as to the service of PAN, the BIR has failed to provide any contrary evidence which would show that respondent actually received the same. In fact, as likewise admitted by the witness for petitioner in her judicial affidavit,[33] the Court notes that petitioner did not first attempt to personally serve the PAN to respondent's registered address. Instead, in her judicial affidavit, RO Jezzebelle Bercasio explained that after the issuance of the PAN, she served the same by registered mail at the registered address of respondent. It was only after mailing which she then recalled personally serving the same to respondent's known address in Makati. Unfortunately, petitioner submitted no proof of the same. The relevant portion of the judicial affidavit[34] of RO Jezzebelle Bercasio reads, as follows:

> **12. After the Issuance of the Letter of Authority, what was the next step you undertook, if any?**
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> A: I went to the registered business address of the taxpayer at Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal to serve the Letter of Authority. However, there [were] no sales, administrative and accounting operation of the company in that address despite it being the registered address of petitioner. Thus, it

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[32] Exhibit "R-11", *Judicial Affidavit (The examination of the witness Revenue Officer Jezzebelle S. Bercasio was conducted at the Legal Division, Room 505, Roof Deck, Fisher Mall Building, Roosevelt cor. Quezon Ave., Quezon City by Atty. Rowell B. Vicente of the BIR-RR7B Legal Division)*, Division Docket, pp. 2020 to 2025.
[33] *Ibid.*
[34] *Ibid.*

was served upon the taxpayer through its authorized representative Irene J. Buban at its Makati Office.

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**16. What did you do next, if any?**

A: I prepared a Memorandum Report addressed to the Regional Director of Quezon City which contained my recommendation that a Preliminary Assessment Notice be issued.

**17. I am showing you a Memorandum Report addressed to the Regional Director (Exhibit R-8, Page 336-338, BIR Records). Please go over the same and tell this Honorable Court what is the relation of this document to the Memorandum you mentioned.**

A: This is the same Memorandum I mentioned.

**18. What happened to your recommendation?**

A: Based on the BIR Records, my recommendation was approved. A Preliminary Assessment Notie with Details of Discrepancies dated 29 December 2015 was issued. (Exhibit R-9, Page 384-389, BIR Records)

On 29 December 2015, I served a Preliminary Assessment Notice (PAN) with Details of Discrepancies, dated 29 December 2015, through registered mail at the taxpayer's registered address at Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal. The fact of service is evidenced by Registry Receipt No. 10324 (Exhibit R-9a, Page 388, BIR Records). I also recall personally serving to petitioner with a copy of the PAN to its Makati Office.

Furthermore, although petitioner offered in evidence, the registry receipt of the fact of mailing of PAN, no other evidence was presented to show actual receipt by herein respondent. This was likewise admitted by respondent's own witness was inquired during trial, to wit:

JUSTICE UY:

Justice San Pedro has questions.

JUSTICE SAN PEDRO:

Ms. Witness, in your Answer to Questions 18 and 21, you attached the registry receipts to the notices you sent via registered mail, **do you have the corresponding return cards for this or any proof that these were actually received by petitioner?**

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Witness:

I cannot recall if it is attached in the docket but aside from sending it to registered mail, I personally came to their Makati office.

JUSTICE SAN PEDRO:

That is not my question. My question is, do you have the return cards, corresponding return cards to this registry receipts or any other alternative proof or receipts of those you sent by registered mail?

A:

Only the registry receipt but **I think no return cards attached in this docket.**[35]

A previously cited and discussed by the Supreme Court in the *GJM* case, *to prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry <u>return card which would have been signed by the taxpayer or its authorized representative</u>.*[36] Petitioner failed. Aside from the registry receipt of the PAN, no other evidence was presented to prove that the same was received by herein petitioner. In fact, for its part, respondent has offered in evidence, a sealed envelope which contain the PAN. Such envelope included a notation which provides "Return to Sender".

Hence, in view of the totality of the evidence presented to the Court *a quo*, herein petitioner failed to satisfy the burden of proof to show by contrary evidence that indeed, respondent was validly served with the PAN and actually received the same.

Moreover, to further convince this Court, petitioner adds to his arguments that the non-receipt of a PAN is a *slight infirmity* which does not necessarily result to violation of due process.

Petitioner is mistaken.

The importance of a PAN in the whole tax assessment process has been well-settled by law, rules, and regulations. In fact, the Supreme Court, in its numerous rulings explicitly discussed on its nature and crucial role in affording the taxpayer of its right to due process of law.

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[35] Transcript of Stenographic Notes for the hearing dated March 30, 2022, p. 17 to 18.
[36] G.R. No. 202695, February 29, 2016.

In *Commissioner of Internal Revenue v. Metro Star Superama*,[37] the High Court highlighted that the sending of a PAN is not a mere formality, and is very much part of due process, to wit:

> Indeed, Section 228 of the Tax Code clearly requires that the **taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN**. He must be informed of the facts and the law upon which the assessment is made. **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
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> xxx xxx xxx
>
> it is clear that **the sending of a PAN** to taxpayer to inform him of the assessment made **is but part of the "due process requirement in the issuance of a deficiency tax assessment,"** the **absence of which renders nugatory any assessment made by the tax authorities**. The use of the word *"shall"* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights** and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void. *(Emphasis added)*

Furthermore, in the case of *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[38] not only does the PAN serve to inform a taxpayer of its tax liability, more importantly, it gives the taxpayer and the BIR an opportunity to settle the case, *viz.*:

> The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.

Therefore, petitioner is entirely mistaken in giving less importance and claiming that the non-receipt of a PAN is a *slight infirmity* which does not amount to a violation of due process of law.

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[37] G.R. No. 185371, December 8, 2010.
[38] G.R. No. 227544, November 22, 2017.

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*The ability to protest the assessment despite non-receipt of the PAN does not cure such infirmity*

Finally, petitioner insists a final argument that respondent was not denied of due process considering that it was able to protest the assessment. He argues that due process is already satisfied when a person is notified of the charge against him and was given an opportunity to explain or defend himself.

We disagree.

In *Commissioner of Internal Revenue v. Fort 1 Global City Center, Inc.*,[39] the Supreme Court, citing the landmark case of *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, again explicitly pronounced that the BIR's due process violations will not be cured because of the fact that a taxpayer was able to *subsequently* protest the assessment. The High Court even went on to add that the BIR must be mindful to abide by its own rules and regulations, and uphold the constitutional rights of the taxpayer, to wit:

> **That FGCCI was able to file its protests and responses to the BIR does not bar it from raising the issue of due process**. In *Mannasoft*, We held that the **BIR's defect in complying with the requirements of due process was not cured by the fact that the taxpayer could file a protest to the FAN**. Moreover, the BIR was negligent in complying with its own rules; hence, it should not be allowed to benefit from the doctrine of estoppel.
>
> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements outlined in Section 228 of the Tax Code and its implementing rules is void and produces no effect. This is because while it is true that taxation is the lifeblood of the government, the power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process. This Court has consistently recognized that, between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process. **We have repeatedly urged strict observance by the BIR of the prescribed procedure for issuance of the assessment notices to uphold the taxpayers' constitutional rights.** *(Emphasis supplied)*

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[39] G.R. No. 263811, November 26, 2024.

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All told, it cannot be said that improper service and the non-receipt of a PAN is a *slight infirmity* which may be easily disregarded or ignored. Time and again, the law, rules, regulations, and jurisprudence is rather crystal clear to regard it as an essential part of the whole tax assessment process – and the failure to abide by the laws governing the same proves to result to drastic consequences to the point where the whole assessment process may be nullified.

On a final note, the Court finds it crucial to stress the pronouncement of the Supreme Court in the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc., viz.*: [40]

> While it is true that taxation is the lifeblood of the government, the power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process. **The Court has recognized that, between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.** *(Emphasis supplied)*

Thus, in light of the foregoing, We find no cogent reason to reverse and set aside the CTA Division in cancelling the deficiency VAT and CWT assessments issued against respondent for the taxable period from January 01, 2012 to December 31, 2012 in the aggregate amount of Php22,503,010.77; and in declaring the FLD/FAN, FDDA, PCL and FNBS issued against respondent as null and void.

**WHEREFORE**, premises considered, the *Petition for Review* is **DENIED** for lack of merit. Consequently, the Assailed Decision dated October 18, 2023 and Resolution dated April 4, 2024 of the CTA Division are hereby **AFFIRMED.**

**SO ORDERED.**

**HENRY S. ANGELES**
Associate Justice

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[40] G.R. No. 255473, 13 February 2023.

**WE CONCUR:**

**ON LEAVE**
**MA. BELEN M. RINGPIS-LIBAN**
Presiding Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes - Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

**CORAZON G. FERRER-FLORES**
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.

**JEAN MARIE A. BACORRO-VILLENA**
Acting Presiding Justice