REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB CASE No. 857** (CTA Case No. 8000)
	Members:
-versus-	ACOSTA, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
UNIOIL CORPORATION, Respondent.	Promulgated: NOV 13 2012 2:00 p.m.

X- -X

DECISION

Casanova, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review[1], under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking the reversal of the Decision[2] dated

[1] En Banc Rollo, pp. 5-14.
[2] Annex "A" to Petition for Review, *Ibid.*, pp. 16-28.

October 4, 2011 (Assailed Decision) and the Resolution[3] dated December 21, 2011 (Assailed Resolution), both rendered by the CTA Third Division.

The facts of the case, as found by the CTA Third Division, are briefly narrated as follows[4]:

> "Petitioner is a corporation duly organized and existing under Philippine laws, with office address at 2707 West Wing, PSE Center, Ortigas, Pasig City.
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> Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with address at the BIR National Office Building, Agham Road, Diliman, Quezon City.
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> On January 26, 2009, petitioner received a Formal Letter of Demand and Final Assessment Notice (FAN) finding petitioner liable for deficiency withholding tax on compensation and deficiency expanded withholding tax for the year ending December 31, 2005. The relevant details are as follows:
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> I. DEFICIENCY WITHHOLDING TAX ON COMPENSATION

Taxable Salaries per Investigation	P 3,106,737.64
Taxable Salaries per Alphalist	559,070.00
Salaries not subjected to Withholding Tax	**P 2,547,667.64**
Tax Due per Investigation	P 319,623.33
Less: Tax paid per Returns	40,948.91
Deficiency Withholding Tax on Compensation	278,674.42
Add: 20% interest p.a. (January 17, 2006 to February 13, 2009)	173,159.89
Total Deficiency Withholding Tax on Compensation	**P 451,834.31**

> II. DEFICIENCY EXPANDED WITHHOLDING TAX

Professional Fees	P 8,023.60
Payment to contractors/ subcontractors	44,380.72
Deficiency Expanded Withholding Tax	P 52,404.32
Add: 20% interest p.a. (January 17, 2006 to February 13, 2009)	32,562.47
Total Deficiency Expanded Withholding Tax on Compensation	**P 84,966.79**

[3] Annex "B" to Petition for Review, *Ibid.*, pp. 30-34.
[4] Decision, CTA En Banc Rollo, pp. 17-19.

Petitioner filed its protest to the FAN on February 25, 2009 and submitted its supporting documents on April 24, 2009.

Thereafter, petitioner filed the instant Petition for Review on November 20, 2009, considering that respondent failed to act on its protest and the one hundred eighty (180) – day period had already expired.

On December 14, 2009, respondent filed her Answer, where she raised the following Special and Affirmative Defenses:

> '5. All presumptions are in favor of the correctness of the Assessments;
>
> 6. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts of which the assessment was based and the provisions of the law used in arriving at such deficiency assessment;
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> 7. Contrary to the allegations of the Petitioner, not all supporting documents were not submitted to completely support or rebut the assessment issued against the herein Petitioner;
>
> 8. The Respondent had acted on the protest of the subject taxpayer. However, Respondent failed to issue its final resolution on the protest at the time the instant Petition was filed before this Honorable Court;
>
> 9. The right to collect the withholding tax liability of the Petitioner has not prescribed. The withholding tax is merely being held by the Petitioner as an agent of the Government and Petitioner could not unjustly enrich itself by failing to remit the tax it withheld at the expense of the Government under the principle of *solutio indebiti;*
>
> 10. Section 72 of the National Internal Revenue Code was used by the Assessment Division as its authority to assess the herein Petitioner for its deficiency taxes. The assessment was based on the underdeclaration or undervaluation of the salaries account of the Petitioner which resulted in the Deficiency Withholding Tax on Compensation;

> 11. As per audit investigation, it was determined that various income payments were not fully subjected to expanded withholding tax as required under Revenue Regulations No. 2-98, particularly the accounts of Professional Fees, Payments to Contractors, Repairs and Maintenance-Labor, Advertising and Manpower Services;'
>
> During trial, petitioner offered in evidence Exhibits 'A' to 'D', which were all admitted, except for Exhibit 'B', in a Resolution dated September 8, 2010. For her part, respondent offered in evidence Exhibits '1' to '11', and were all admitted, except for Exhibits '3' to '3-A', in a Resolution dated June 10, 2011.
>
> The case was submitted for decision on August 9, 2011, considering petitioner's 'Memorandum' filed on July 14, 2011 and the report of the Court's Judicial Records Division that respondent failed to file her memorandum.'

On October 4, 2011, the CTA Third Division promulgated the Assailed Decision granting the Petition for Review, thereby cancelling and setting aside the assessments for deficiency withholding tax on compensation and deficiency expanded withholding tax for taxable year 2005. Pertinent provision of the Assailed Decision is quoted hereunder, to wit:

> "In sum, **respondent's failure to strictly comply with the notice requirements as laid down in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 amounts to the denial of petitioner's right to due process, effectively voiding the assessments issued**.
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. However, well-enshrined is the constitutional mandate that no person shall be deprived of his property without due process of law. Thus, the Revenue Commissioner or her duly authorized representatives are expected to give accord to procedures laid down in law or regulations in assessing or collecting taxes. Taxpayers owe honesty to government just as government owes fairness to taxpayers.

In view of the foregoing, there is no reason for the Court to discuss the other issues and arguments of the parties considering that a void assessment bears no fruit.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency withholding tax on compensation and deficiency expanded withholding tax in the amount of P536,801.10, inclusive of interests, for taxable year 2005 are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED." *(Emphasis supplied)*

On October 21, 2011, petitioner filed her Motion for Reconsideration (on the 4 October 2011 Decision)[5] while respondent filed its Opposition to Motion for Reconsideration[6] on November 3, 2011.

On December 21, 2011, the CTA Third Division promulgated the Assailed Resolution[7] where petitioner's Motion for Reconsideration was denied for lack of merit. It held:

"In sum, respondent's failure to strictly comply with the notice requirements as laid down in Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-99 amounts to the denial of petitioner's right to due process, effectively voiding the assessments issued.

WHEREFORE, premises considered, the instant Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

Hence, the present Petition for Review.

On April 13, 2012, the CTA *En Banc* issued a Resolution[8] ordering respondent to file its Comment to the subject petition. On May 3, 2012, respondent filed its Comment (To Petitioner's Petition for Review).[9]

In a Resolution[10] dated June 4, 2012, the CTA *En Banc* directed the parties to simultaneously file their respective Memorandum. Petitioner filed

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[5] Division Docket, pp. 482-485.
[6] *Ibid.*, pp. 488-503.
[7] *Id.*, pp. 505-509.
[8] CTA *En Banc* Rollo, pp. 64-65.
[9] *Ibid.*, pp. 66-83.

her Memorandum[11] on July 13, 2012 while respondent filed its Memorandum[12] on July 16, 2012. Respondent likewise filed its Comment (to Petitioner's Memorandum)[13] on July 26, 2012.

On August 1, 2012, the instant case was submitted for decision.[14]

The core of the controversy in the instant case is the propriety of the ruling in the Assailed Decision and Assailed Resolution cancelling and setting aside the assessment for deficiency withholding tax on compensation and deficiency expanded withholding tax for the taxable year 2005 on the basis that no Preliminary Assessment Notice (PAN) was received by taxpayer Unioil, thus, violating its right to procedural due process.

Petitioner submits that the respondent was served a copy of the PAN and was not denied its right to due process, hence, the subject assessments are valid and respondent should be held liable accordingly.

After a careful and thorough evaluation of the arguments raised by petitioner, this Court finds no merit in the present petition.

This Court affirms the ruling of the CTA Third Division in the Assailed Decision and Assailed Resolution that petitioner failed to comply with the notice requirements mandated under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, thereby denying respondent of its right to due process, hence, effectively voiding the assessments issued.

Section 228 of the 1997 National Internal Revenue Code clearly provides for the right of the taxpayer to procedural due process in the issuance of assessment. It is mandated that a taxpayer should be informed in writing of the law and the facts upon which the assessment against him is based, otherwise such assessment shall be invalid. Section 228 states thus:

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[10] *Id.*, pp. 85-86.
[11] *Id.*, pp. 87-93.
[12] *Id.*, pp. 94-113.
[13] *Id.*, pp. 114-124.
[14] *Id.*, pp. 126-127.

"CHAPTER III
Protesting an Assessment, Refund, Etc.

'**SECTION 228.** ***Protesting of Assessment.*** **— When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: Provided, however, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(d) When the excise tax due on excisable articles has not been paid; or
(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.' *(Emphasis supplied)*

Such mandate is further reinforced by the provisions of Section 3 of Revenue Regulations No. 12-99 where the due process requirement in the issuance of deficiency tax assessments is defined as follows:

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 ***Preliminary Assessment Notice (PAN).*** — **If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which

> case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> 3.1.3 *Exceptions to Prior Notice of the Assessment.* — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:
> (i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
> (ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> (iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
> (iv) When the excise tax due on excisable articles has not been paid; or
> (v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
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> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. *(Emphasis supplied)*
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> xxx xxx xxx"

The law and the regulations are clear on the requirements for procedural due process on the issuance of assessment for deficiency taxes. Full and complete compliance with these requirements is mandatory to ensure the validity of the assessment. Consequently, a void assessment bears no valid fruit.[15]

The issuance of PAN is an integral part of procedural due process. The PAN lays down the factual and legal basis for the assessment. We reiterate the Assailed Decision's discussion on the indispensable nature of the PAN in the issuance of assessments and give emphasis to the fact that the 1997 NIRC provided that the issuance of PAN in assessments is mandatory in tax assessments except in a few instances, specifically enumerated by law, where it is not required.

The Supreme Court, in the recent case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[16] ruled that PAN is a vital component of procedural process in the issuance of tax assessments, to wit:

> "xxx Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
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> The answer to these questions requires an examination of Section 228 of the Tax Code which reads:
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> xxx xxx xxx
>
> 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.
>
> This is confirmed under the provisions R.R. No. 12-99 of the BIR which pertinently provide:

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[15] Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. No. 159694 & G.R. No. 163581 January 27, 2006.
[16] G.R. No. 185371, December 8, 2010.

xxx xxx xxx

> From the provision quoted above, **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 ours)*

In the present petition, respondent denies the receipt of the PAN in relation to the deficiency tax assessments issued against it by the petitioner. Petitioner on the other hand alleges that petitioner actually received the PAN considering that it was able to file its protest to the PAN. We agree with respondent.

As respondent categorically denies the receipt of the PAN, it is incumbent upon petitioner to prove the contrary. In the case of *Republic of the Philippines vs. The Court of Appeals, and Nielson & Company, Inc.,*[17] the Supreme Court held that:

> "As correctly observed by the respondent court in its appealed decision, **while the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**." *(Emphasis ours)*

Hence, as petitioner failed to prove the receipt of the PAN by the respondent, thereby effectively denying the latter of its right to due process, We affirm the CTA Third Division's ruling cancelling and setting aside the subject assessments for deficiency withholding taxes and deficiency expanded

[17] G.R. No. L-38540, April 30, 1987.

withholding taxes for the taxable year 2005. Accordingly, We find it unnecessary to delve into the other issues raised in the present petition.

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.[18]

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Decision dated October 4, 2011 and the Assailed Resolution dated December 21, 2011, both promulgated by the CTA Third Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 4, 2011 Decision and the December 21, 2011 Resolution of the CTA Third Division are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[18] Commissioner of Internal Revenue vs. Algue, Inc., and the Court of Tax Appeals, G.R. No. L-28896, February 17, 1988.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice