REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION
****

FIDELA D. FERNANDEZ, Represented by her attorney-in-fact Jose Vicente D. Fernandez Petitioner,	**CTA Case No. 9908**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
HON. CAESAR R. DULAY, COMMISSIONER OF INTERNAL REVENUE, and OIC-RD GERRY O. DUMAYAS, BIR REVENUE REGION NO. 10, Respondents.	***Promulgated:*** MAR 24 2023 1:34 p.m.

x - x

DECISION

UY, *J*.:

Before this Court is a *Petition for Review*[1] *with Motion for the Suspension of Collection* filed on August 14, 2018 by petitioner Fidela D. Fernandez, represented by her attorney-in-fact Jose Vicente D. Fernandez against respondents Commissioner of Internal Revenue (CIR) and Officer-in-Charge Regional Director (OIC-RD) of Bureau of Internal Revenue (BIR) Region 10, praying for the following:

> "(A) After due determination or hearing and the posting of the bond, in the event the honorable court may deem it to be proper, the collection of the assessed P3.9 million in deficiency Income Tax (IT) and Value-Added Tax (VAT) for the taxable year 2006 be suspended or enjoined;
>
> (B) A resolution be promulgated giv(ing) due course to the instant Petition, and after trial, judgment be made declaring Assessment No. 067-06-103-341-236 as null and

[1] Docket - Vol. 1, pp. 10 to 43, at p. 31.

void *ab initio* and ordering respondents to refund the amount of ₱132,687.00 paid as compromise to petitioner (should be respondent); and

(C) Other reliefs that may be deemed by the honorable court to be just and equitable under the premises."

THE PARTIES

Petitioner is a widow and a resident of No. 2 Vicente Fernandez St., BF Homes, Parañaque City. She is the proprietress of Bacacay Shell Station located at Magsaysay Avenue, Bacacay, Albay and with Tax Identification Number 103-341-236-VAT registered with Revenue District Office No. 67, Legazpi City. Petitioner is herein represented by her attorney-in-fact and son, Jose Vicente D. Fernandez, a lawyer and with office and postal address at 56 Karangahan Blvd., 4500 Tabaco City, Albay.[2]

Respondent Dulay was the former duly appointed Commissioner of Internal Revenue (CIR). The CIR is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith and holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City where he may be served with summons, legal processes, orders and resolutions of the Court.[3]

THE FACTS

Records show that Letter of Authority[4] ("LOA") dated October 15, 2007 authorized Revenue Officer (RO) Domingo L. Aguinaldo to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2006 to December 31, 2006.

On October 8, 2008, a *Formal Letter of Demand* ("FLD")[5] was issued to petitioner, demanding payment for alleged deficiency tax

---

[2] Joint Stipulation of Facts and Issues (JFSI), Stipulation of Facts, par. 1, Docket – Vol. 2, p. 592.
[3] JSFI, Stipulation of Facts, par. 2, Docket – Vol. 2, p. 592.
[4] Exhibit "P-1", Docket – Vol. 1, p. 80, and p. 328; Exhibit "P-42," Docket – Vol. 2, p. 807.
[5] Exhibit "P-2," Docket – Vol. 1, pp. 329 to 330.

liabilities for the taxable year 2006, in the aggregate amount of ₱3,835,366.35.

On November 28, 2012, BIR Revenue District No. 67 issued *Warrants of Garnishment* addressed to Landbank, Tabaco City Branch,[6] and China Bank, Tabaco City Branch.[7]

Petitioner filed a *Letter*[8] dated December 1, 2012, addressed to Regional Director (RD) Esmeralda M. Tabule of Revenue Region No. 10, BIR, praying for the following: (1) Plea for the cancellation of the Warrant of Distraint and/or Levy; (2) Alternative plea for compromise under Revenue Regulations No. 30-02; and (3) Plea for the suspension of enforcement, or recall, of the issued Warrant of Distraint and/or levy pending resolution of the case.

In his *Letter*[9] dated December 5, 2012, Revenue District Officer (RDO) Ariel Calabia replied that subject assessment was already final and executory as far as the district is concerned, because the case docket was already forwarded to Collection Division. However, petitioner's *Letter* dated December 1, 2012 will be forwarded to Regional Evaluation Board (REB) for consideration and appropriate action.

In response thereto, petitioner filed a *Letter*[10] dated December 17, 2012, reiterating his objections on the validity of Assessment No. 067-06-103-341-236.

In turn, RDO Calabia issued a *Follow-up Letter*[11] dated December 17, 2012, stating that they cannot proceed to recommend and turnover the docket favorably to the higher authorities (REB), without payment of the offer of ten percent (10%) of the basic tax due, except the withholding tax and compromise penalty.

Petitioner also filed another *Letter*[12] dated January 8, 2013, addressed to RDO Calabia, manifesting the availment of the

---

[6] Exhibit "P-3," Docket – Vol. 1, p. 331.
[7] Exhibit "P-4," Docket – Vol. 1, p. 332.
[8] Exhibit "P-5," Docket – Vol. 1, pp. 83 to 88.
[9] Exhibit "P-5-A," Docket – Vol. 1, p. 89.
[10] Exhibit "P-6", Docket – Vol. 1, pp. 90 to 92.
[11] Exhibit "P-7", Docket – Vol. 1, p. 333.
[12] Exhibit "P-8", Docket – Vol. 1, pp. 93 to 98.

compromise settlement scheme and to tender payment in the total amount of ₱139,625.00.[13]

In a *Letter*[14] dated January 24, 2013, RDO Calabia lifted the *Warrant of Garnishment* issued to Fidela D. Fernandez, in view of the offer of compromise to settle petitioner's tax liabilities.

On September 14, 2017, petitioner, through attorney-in-fact Vicente, received the *Letter*[15] dated September 7, 2017 issued by then BIR Regional Director Edgar B. Tolentino, informing the petitioner that the compromise offer had been rejected by the Regional Evaluation Board through Resolution No. 08-2016.[16]

On September 27, 2017, petitioner filed a *Motion for Reconsideration* of REB's Resolution No. 08-2016.[17]

On July 18, 2018, petitioner received a copy of the *Letter*[18] dated July 9, 2018, wherein the request for reconsideration was denied by OIC-Regional Director Gerry O. Dumayas for lack of factual and legal basis.

Aggrieved, petitioner filed the instant *Petition for Review with Motion for the Suspension of Collection*[19] on August 14, 2018, to which respondents filed their *Answer*[20] on November 19, 2018.

On September 18, 2018, respondents filed a *Motion to Admit Attached Comment,*[21] which was granted in the *Resolution*[22] dated October 8, 2018. Hence, respondents' *Comment Re: Petitioner's Motion for Suspension of Collection*[23] was admitted as part of the records of the case.

Respondents filed a *Memorandum (Re: Petitioner's Application*

---

[13] Exhibits "P-8-series" to "P-9-series," Docket – Vol. 1, pp. 99 to 119.
[14] Exhibit "P-10", Docket – Vol. 1, p. 120.
[15] Exhibit "P-11", Docket – Vol. 1, p. 45.
[16] Exhibit "P-12", Docket – Vol. 1, pp. 46 to 47.
[17] Exhibit "P-13", Docket – Vol. 1, pp. 48 to 66.
[18] Exhibit "P-14", Docket – Vol. 1, p. 68.
[19] Docket - Vol. 1, pp. 10 to 43.
[20] Docket – Vol. 1, pp. 364 to 372.
[21] Docket – Vol. 1, pp. 132 to 135.
[22] Docket – Vol. 1, p. 241.
[23] Docket – Vol. 1, pp. 137 to 143.

for the Issuance of TRO and Writ of Preliminary Injunction)[24] on March 6, 2019, while petitioner filed a *Memorandum (Petitioner)*[25] on March 25, 2019.

In the *Resolution*[26] dated May 23, 2019, petitioner's *Motion for the Suspension of Collection* was granted, and the collection of taxes was suspended, conditioned on the posting of a surety bond.

On July 4, 2019, petitioner filed a "*Motion for the dispensing of the required deposit or surety bond for the suspension of the collection of assessed taxes, or for the reduction thereof to the amount already remitted to respondent as compromise settlement offer*",[27] praying that the required bond for the suspension of the collection of the assessed deficiency taxes be dispensed with, or in lieu thereof, for the reduction thereof, the amount of ₱99,818.87 in compromise settlement offer paid to, and in the custody of respondents.

In their *Comment*[28] filed on July 17, 2019, respondents pray that the subject Motion be denied for utter lack of merit.

In the *Resolution*[29] dated October 2, 2019, petitioner's *Motion* was granted, and the required cash deposit or bond provided under Section 11 of Republic Act No. 1125, was dispensed with.

During the initial pre-trial conference on June 20, 2019, the parties' counsels agreed to have this case referred to the Philippine Mediation Center- Court of Tax Appeals (PMC-CTA) and the proceedings herein were suspended for thirty (30) days from the date of preliminary mediation conference on August 7, 2019.[30]

Considering the "Mediator's Report"[31] filed by the PMC-CTA stating the unsuccessful mediation of the instant case, the Pre-trial Conference was set on November 6, 2019.[32]

---

[24] Docket – Vol. 1, pp. 395 to 402.
[25] Docket – Vol. 1, pp. 409 to 423.
[26] Docket – Vol. 1, pp. 487 to 498.
[27] Docket – Vol. 2, pp. 520 to 524.
[28] Docket – Vol. 2, pp. 530 to 534.
[29] Docket – Vol. 2, pp. 545 to 552.
[30] Order dated June 20, 2019, Docket – Vol. 2, pp. 518 to 519.
[31] Docket – Vol. 2, p. 553.
[32] Resolution dated October 23, 2019, Docket – Vol. 2, p.560.

By agreement of both counsels during the Pre-trial Conference held on November 6, 2019,[33] the parties filed their *Joint Stipulation of Facts and Issues*[34] on January 2, 2020. The same was admitted and approved in the *Resolution*[35] dated January 9, 2020 and *Pre-Trial* was deemed terminated. Thereafter, the Court issued the *Pre-Trial Order* on February 5, 2020 [36] and *Amended Pre-Trial Order* on November 10, 2020.[37]

During trial, petitioner presented Jose Vicente D. Fernandez.[38] On the other hand, respondents presented Chief Revenue Officer Domingo L. Aguinaldo.[39]

Thereafter, respondents' filed their *Memorandum*[40] on April 8, 2022 while petitioner's *Memorandum*[41] was filed on May 5, 2022. On May 18, 2022, the instant case was submitted for Decision.[42]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues for resolution:

"For Petitioner:

a. Is Assessment No. 067-06-103-341-236 void for lack of notice to petitioner?

b. Is Assessment No. 067-06-103-341-236 void for lack of factual and legal bases?

c. Does the collection of deficiency taxes in Assessment No. 067-06-103-341-236 amount to double taxation?

---

[33] Order dated November 6, 2019, Docket – Vol. 2, pp. 570 to 572.
[34] Docket – Vol. 2, pp. 592 to 598.
[35] Docket – Vol. 2, pp. 600 to 601.
[36] Docket – Vol. 2, pp. 611 to 618.
[37] Docket – Vol. 2, pp. 882 to 891.
[38] Exhibit "P-17," Docket – Vol. 1, pp. 155 to 163; Exhibit "P-60," Docket – Vol. 2, pp. 633 to 640.
[39] Exhibit "R-7", Docket – Vol. 2, pp. 503 to 508.
[40] Docket – Vol. 2, pp. 955 to 978.
[41] Docket – Vol. 2, pp. 980 to 1011.
[42] Docket – Vol. 2, p. 1015.

d. Is petitioner entitled to the refund of the amount of ₱139,625.00 remitted to the BIR in 2013 as a compromise offer?

For Respondents:

a. Whether or not the Court has jurisdiction over the present case;

b. Whether the petitioner is liable for the assessed deficiency tax for the taxable year 2006."[43]

Petitioner's arguments:

Petitioner argues that Assessment No. 067-06-103-341-236 could never become final, executory, and demandable, as it is void for having been issued in violation of due process.

To be specific, there was allegedly lack of due notice to the petitioner, as the Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), and the Final Letter of Demand/Final Assessment Notice (FLD/FAN) were not received by petitioner or her duly-authorized representative. Worse, Assessment No. 067-06-103-341-236 is devoid of factual and legal basis.

Moreover, in view of the proof presented that the disallowed purchases had been actually incurred, and that input VAT had been paid, the subject assessment amounts to a forced payment of income tax for unrealized income and the imposition of the same VAT twice.

Finally, in view of the invalid or void assessment, there was nothing to compromise. Hence, the amount of ₱139,625.00 under a compromise offer paid by the petitioner should be refunded.

Respondents' counter-arguments:

Respondents counter-argue that the Court has no jurisdiction over the present case. Petitioner allegedly based the filing of the instant petition for review from respondent's denial of petitioner's application for compromise. However, it is clear from the provisions of

---

[43] Amended Pre-Trial Order, Issues, Docket – Vol. 2, p. 884.

Section 3 (a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[44] that respondent's decision on applications for compromise is not included in the jurisdiction of the CTA. Respondent submits that his decision on administrative compromise is discretionary, and does not fall within the jurisdiction of the CTA.

According to respondents, the exercise of the power of compromise is a waiver on the part of the government of its right to receive the contribution from its inhabitants. Hence, the waiver must be voluntary.

Furthermore, respondents contend that assessment of deficiency taxes against petitioner is already final, executory and demandable, and outside the jurisdiction of the Honorable Court.

In addition, respondents claim that due process was observed in the service of BIR Notices. Thus, petitioner is liable to pay the assessed deficiency income tax, value-added and withholding tax.

THE COURT'S RULING

The CIR contends that the denial of the compromise agreement is not a matter subject of this Court's jurisdiction.[45]

We are not convinced.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[46] It is conferred by law.[47] In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.[48] It bears stressing that the CTA, being a court of

[44] **Rule 4 – *Jurisdiction of the Court***
"**Section 3.** ***Cases within the jurisdiction of the Court in Division***. – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."
[45] Par. 14, Respondent's *Answer* dated November 16, 2018, Docket - Vol. 1, p. 367.
[46] *St. Mary's Academy of Caloocan City, Inc. vs. Henares, et al.*, G.R. No. 230138, January 13, 2021.
[47] *Id.*
[48] *Mactel Corporation vs. City Government of Makati,* G.R. No. 244602, July 14, 2021.

special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[49]

Section 7 (a) (1) of Republic Act (R.A.) No. 1125,[50] as amended by R.A. No. 9282[51] and R.A. No. 9503,[52] states:

> "**SECTION 7**. *Jurisdiction*. – The CTA shall exercise:
>
> (a) *Exclusive appellate jurisdiction to review by appeal, as herein provided:*
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, *or* ***other matters arising under the National Internal Revenue Code*** or other laws administered by the Bureau of Internal Revenue." *(Emphasis supplied.)*

Likewise, Section 3 (a) (1), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, enumerates the cases falling within the jurisdiction of the Court of Tax Appeals in Division, to wit:

> "**SECTION 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes,

---

[49] *Procter & Gamble Asia, Pte. Ltd. vs. Commissioner of Internal Revenue,* G.R. No. 207587, April 28, 2021; *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.,* G.R. No. 221780, March 25, 2019.

[50] AN ACT CREATING THE COURT OF TAX APPEALS.

[51] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[52] AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> fees or other charges, penalties in relation thereto, or ***other matters arising under the National Internal Revenue Code*** or other laws administered by the Bureau of Internal Revenue." *(Emphasis supplied.)*

Based on the foregoing provision, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds.[53] Rather, the second part of the provision specifically covers other cases that arise out of the NIRC or other related laws administered by the BIR. The wording of the provision is clear and simple.[54]

In other words, aside from the decisions of the CIR pertaining to assessments or refunds, decisions of the CIR relating to "*other matters*" may be taken cognizance of by the CTA, if such "*other matters*" arose from the NIRC or other laws administered by the BIR.

In this case, REB Resolution No. 08-2016[55] denied the petitioner's request to pay five percent (5%) of basic deficiency taxes as compromise settlement, for falling short of the required percentage for assessments of doubtful validity, pursuant to Revenue Regulations No. 30-2002. On September 27, 2017, petitioner filed her *Motion for Reconsideration of Regional Evaluation Board Resolution No. 08-2016,*[56] which was denied in the Letter-Decision[57] dated July 9, 2018.

In other words, the assailed Letter-Decision[58] dated July 9, 2018, which denied petitioner's Request for Reconsideration of its offer of compromise for lack of merit, is a matter which arose from the provisions of the NIRC of 1997, as amended. To be specific, the power of the CIR to enter into a compromise is granted under Section 204 (A) of the NIRC of 1997, as amended, to wit:

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** — The Commissioner may —

MD

[53] *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division, et al.*, G.R. No. 258947, March 29, 2022.
[54] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004.
[55] Exhibit "P-12," Docket – Vol. 1, pp. 46 to 47.
[56] Exhibit "P-13," Docket – Vol. 1, pp. 48 to 66.
[57] Exhibit "P-14," Docket – Vol. 1, p. 68.
[58] Exhibit "P-14," Docket – Vol. 1, p. 68.

xxx xxx xxx

> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> For other cases, a minimum corporate rate equivalent to forty percent (40%) of the basic assessed tax.
>
> Where the basic tax involved exceeds One million pesos (₱1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners."

With regard to the CIR's power to enter into a compromise, it is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with the Supreme Court having the last say on the matter.[59]

The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national

MB

---

[59] *Philippine National Oil Company vs. Court of Appeals, et al., et seq.*, G.R. Nos. 109976 and 112800, April 26, 2005.

emergency.[60] Thus, the BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, this Court may correct such abuse if the matter is appealed to it.[61]

In other words, the decision of the CIR in relation to the exercise of his power to enter into a compromise under Section 204 (A) of the NIRC of 1997, as amended, that is tainted by a failure to abide by the parameters set by law, is subject to this Court's exclusive appellate jurisdiction.

In this case, this Court finds that this Court has jurisdiction to review respondent's Letter-Decision dated July 9, 2018, which denied petitioner's Request for Reconsideration of her offer for compromise settlement.

In order to determine if the denial of the offer for compromise settlement was in order, it is necessary to examine the validity of the deficiency tax assessment.

At this juncture, this Court finds that in order to determine whether the denial of petitioner's offer of compromise settlement was proper, there is a need to first delve into the validity of the subject deficiency tax assessment.

Simply put, it is necessary to first make a determination as to whether the assessment was valid, and if respondent may validly collect the subject deficiency taxes. If it is concluded that there was a violation of petitioner's right to substantive or procedural due process, then the subject tax assessment would be declared *void*.

A void assessment bears no fruit.[62] It cannot attain finality, nor can any collection of tax resulting therefrom be sustained by this Court. Consequently, there would have been no basis to deny petitioner's

MJ

---

[60] *Id.*
[61] *Id.*
[62] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 241848, May 14, 2021; *Commissioner of Internal Revenue vs. Unioil Corporation,* G.R. No. 204405, August 4, 2021; and *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

request to pay five percent (5%) of basic deficiency taxes as compromise settlement, despite being below the required percentage for assessments of doubtful validity, as stated in Revenue Regulations No. 30-2002.

Respondent failed to prove that the assessment notices were actually received by the petitioner.

Petitioner denies receiving the LOA, PAN, and FLD/FAN[63] for the subject deficiency income tax and VAT assessment for TY 2006.[64] Hence, petitioner argues that the absence of the subject notices renders the tax assessment and any action to collect such assessment, void and bear no fruit.

For his part, respondent asserts that the LOA, PAN and FLD/FAN were duly served upon the petitioner, and received by a certain Rommel Braga.[65]

We find for the petitioner.

Section 228 of the NIRC of 1997, as amended, requires that a taxpayer be notified in writing of the law and the fact on which an assessment is made. Otherwise the assessment shall be void, to wit:

> "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

MJ

---

[63] Exhibit "P-2," Docket Vol. 1, pp. 329 to 330.
[64] Exhibit "P-17," Judicial Affidavit of Jose Vicente D. Fernandez, Docket – Vol. 1, pp. 155 to 163, at 157, 158, 162.
[65] Respondent's Memorandum, Docket – Vol. 2, pp. 955 to 978, at 972 to 975.

(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 the 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.

<u>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</u>. xxx xxx xxx" *(Underscoring supplied.)*

Pursuant to the foregoing provision, Revenue Regulations No. 12-99[66] was issued, specifying the due process requirement to be observed in issuing deficiency tax assessments, to wit:

"**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:

xxx xxx xxx

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, **<u>the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN)</u>** for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or

---

[66] 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.

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.

xxx xxx xxx

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. **<u>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</u>**." *(Emphasis and underscoring supplied)*

From the foregoing, if the CIR or his authorized representative finds that sufficient basis exists to assess the taxpayer, he is mandated to inform the latter of the law and facts on which the assessment is made. Otherwise, the assessment shall be void.

The use of the word '*shall*' in Section 228 of the National Internal Revenue Code and in Revenue Regulations No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him or her is *mandatory*.[67] This is an essential requirement of due process and

[67] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018; citing *Commissioner of Internal Revenue vs. Liquigaz Philippines Corp.*, 784 Phil. 874, 888 (2016).

applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.[68]

It is stressed that 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.[69] Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.[70] Based on the foregoing, the issuance of a valid formal assessment, pursuant to the provisions of Section 228 of the NIRC, as amended, in relation to RR No. 12-99, is a *substantive prerequisite to tax collection.* Accordingly, respondent must prove the issuance and service of a valid assessment for it to be able to enforce any payment of deficiency taxes from petitioner.

Preliminary Assessment Notice

In this case, a perusal of the PAN dated July 25, 2008,[71] shows that there is no indication that it was ever served to the petitioner, whether through personal service or registered mail, contrary to the provisions of Section 228 of the NIRC, as amended, in relation to RR No. 12-99. In fact, Revenue Officer Domingo L. Aguinaldo stated that he does not remember whether the PAN was served or mailed to the petitioner.[72]

The failure to serve the PAN to the petitioner in this case is fatal, as there can be no valid assessment, without compliance with the due process requirements. To reiterate, the PAN is a part of due process. It gives both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the

---

[68] *Id.*
[69] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021; *Commissioner of Internal Revenue vs. Azucena T. Reyes, et seq.*, G.R. Nos. 159694 and 163581, January 27, 2006.
[70] *Id.*
[71] Exhibit "R-4," BIR Records, pp. 124 to 126.
[72] TSN dated October 21, 2021, p. 25.

issuance of a Final Assessment Notice.[73] In other words, respondent's failure to comply with due process requirements, *i.e.*, the issuance of the PAN, renders the subject assessment void.

Letter of Authority and Formal Letter of Demand

While respondent's failure to serve the PAN already renders the subject assessment void, this Court notes that there were also infirmities in respondent's service of the LOA and FLD in this case.

To be specific, a review of the LOA[74] dated October 15, 2007 and FLD[75] dated October 8, 2008, show that these were received by a certain "*Rommel Braga.*"

Petitioner, however, argues that she never employed a person by that name, and that such person was not an authorized representative.[76]

RO Aguinaldo, however, affirms that he personally served the LOA on October 17, 2007, which was received by *Rommel Braga*, who was at the office of the gasoline station at the time of service of the LOA.[77]

To determine whether there was valid service of assessment notices to a taxpayer's *authorized representative*, reference is made to the pronouncements in the case of *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*,[78] to wit:

> "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 the 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

---

[73] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021, citing *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq., supra.*
[74] Exhibit "R-1," BIR Records, p. 99.
[75] Exhibit "R-5," BIR Records, pp. 118 to 119.
[76] Petition for Review, Docket – Vol.1, p. 21.
[77] TSN dated October 21, 2021, pp. 7 to 8.
[78] G.R. No. 240729, August 24, 2009.

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.

xxx xxx xxx

The Court sees no reason to set aside the findings of the CTA *En Banc*. x x x

In any event, the Court finds significant the fairly recent issuance by no less than the CIR himself of Revenue Memorandum Order No. (RMO) 40-2019 dated May 30, 2019, which prescribes the procedures for the proper service of assessment notices in accordance with the provisions of Section 3.1.6 of RR 18-2013 RMO 40-2019 pertinently provides:

> 12. The Chief of the Assessment Division or the Head of the Reviewing Office shall maintain a record of all assessment notices that were issued with the following details:
>
> 12.1 Type of Assessment Notice (PAN/ FLD/FAN/FDDA);
>
> 12.2 Assessment Notice Number, if applicable;
>
> 12.3 Date of Assessment Notice;
>
> 12.4 Name of Taxpayer;
>
> 12.5 Registered Address;
>
> 12.6 Mode of Service;
>
> 12.7 Date of Service;
>
> 12.8 Name of Taxpayer/Person who received the assessment notice;

ny

12.9 Position/designation/relationship to the taxpayer, if not personally served to the taxpayer named in the assessment notice;

12.10 Address/place where the assessment notice was served/delivered in case the assessment notice was served in a place other than his registered address; and

12.11 Status – Indicate whether the deficiency tax assessment is

a. Paid;

b. Unprotested; or

c. Disputed.

As can be gleaned above, a detailed record of all assessment notices issued by the CIR is required. Notably, among the details to be recorded by the Chief of the Assessment Division or the Head of the Reviewing Office are the "[n]ame of [t]axpayer/[p]erson who received the assessment notice" and, more importantly, the "[p]osition/designation/relationship to the taxpayer, if not served to the taxpayer named in the assessment notice."

While RMO 40-2019 was not yet in force at the time the questioned PAN and FAN in the case were issued, the fact of such subsequent issuance of RMO 40-2019 by the CIR gives the Court all the more reason to affirm, if only for consistency and uniformity, the CTA En Banc's finding that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent. Here, the **CIR failed to identify and authenticate the signatures appearing on Registry Receipt Nos. 5187 and 2581 for the purpose of ascertaining whether such signatures were those of respondent's authorized representative/s**. Hence, it is readily apparent that the CIR could not have complied with the requirement of noting the position/designation/ relationship of Mr. B. Benitez, the recipient, to respondent, the taxpayer."

In the foregoing case, the Supreme Court affirmed the finding of the CTA *En Banc,* that there was a failure to prove proper service of the PAN and FAN, because the CIR failed to identify and authenticate if the signatures were of the taxpayer's authorized representatives.

In other words, in order to prove that the assessment notices were duly served and received by a taxpayer, there is a need for the CIR or his duly authorized representative, to also *identify* and *authenticate* signatures to ascertain whether they actually belong to the taxpayer's *authorized representative.*

In this case, however, when asked whether he ascertained if *Rommel Braga* was in fact, petitioner's duly authorized representative, RO Aguinaldo merely stated that, *Rommel Braga* was "the only person at that office at that time,"[79] and that he did not present any form of identification card.[80]

Clearly, RO Aguinaldo's failure to exert any effort to ascertain whether *Rommel Braga* is actually the person he claims to be, and if he is indeed petitioner's duly authorized representative, falls short of his duty with regard to the service of the subject LOA and FLD. In fact, RO Aguinaldo even admitted that he can no longer recall how the FLD was served to the petitioner.[81]

Taken together, the foregoing firmly establishes that there were lapses in the service of the LOA, PAN, and FLD to the petitioner. The subject deficiency tax assessments, having been issued in violation of petitioner's right to due process, cannot be the source of petitioner's obligation to pay deficiency taxes, nor can it be the basis for the enforcement of payment or collection.

The subject deficiency tax assessment did not attain finality.

Respondent, for his part, maintains that the subject deficiency assessment is already final, executory and demandable, due to petitioner's failure to timely file a protest or appeal. Thus, this Court can no longer rule on the validity of the subject assessment.

---

[79] *Id.*
[80] TSN dated October 21, 2021, p. 40.
[81] TSN dated October 21, 2021, p. 26.

We are not swayed.

Tax collection *must be preceded* by a *valid assessment* to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence.[82] Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.[83]

As ruled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.,*[84] the argument that a deficiency tax assessment has become final and executory, should be premised on the validity of the assessment itself, to wit:

> "Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance, the CIR's argument necessarily fails."

In other words, in order for a deficiency tax assessment to be considered final and executory, it must have been *valid* in the first place. All told, the BIR's right to assess and collect taxes must conform to the requirements for assessment and collection set forth in the law.[85] There can be no equivocation from this right and duty nexus.[86]

In this case, considering that the subject deficiency tax assessment was issued in violation of petitioner's right to due process, the same is void. For being void, the same bears no valid fruit.[87]

---

[82] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[83] *Id.*
[84] *Supra.*
[85] *Commissioner of Internal Revenue vs. Unioil Corporation, supra.*
[86] *Id.*
[87] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021; *Commissioner of Internal Revenue vs. Unioil Corporation,* G.R. No. 204405, August 4, 2021; and *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Correspondingly, there being no valid assessment, there is no basis to deny petitioner's request to pay five percent (5%) of basic deficiency taxes as compromise settlement, despite being below the prescribed percentage for assessments of doubtful validity, as stated in Revenue Regulations No. 30-2002.

Anent petitioner's claim for refund of the amount of ₱139,625.00[88] erroneously paid as compromise settlement, petitioner presented as proof of payment thereof, checks, BIR Deposit Slips, and Payment Forms (BIR Form No. 0605). Upon review of the exhibits presented, however, this Court finds that petitioner was only able to substantiate the amount of ₱99,818.87, as some of the exhibits were denied admission for failure to present the originals for comparison, to wit:

Exhibit No.	**Check No.**	**Amount**	**Admitted/Denied**
P-8-a	0084952	₱13,268.71	Admitted
P-8-a-1	0084951	20,206.61	Admitted
P-8-b	0084953	13,268.71	Admitted
P-8-c	0084954	13,268.71	Admitted
P-8-d	0084955	13,268.71	Admitted
P-8-e	0084956	13,268.71	Admitted
P-8-f	0084957	13,268.71	Admitted
P-8-g	0084958	13,268.71	Admitted
P-8-h	0084959	13,268.71	Denied
P-8-i	0084960	13,268.71	Denied
Exhibit No.	**Deposit Slip/Payment Form**	**Amount**	**Admitted/Denied**
P-9 to P-9-a	Check No. 0084958	₱13,268.71	Admitted
P-9-b to P-9-c	Check No. 0084957	13,268.71	Admitted
P-9-d to P-9-e	Check No. 0084956	13,268.71	Admitted
P-9-f to P-9-g	Check No. 0084955	13,268.71	P-9-g Denied
P-9-h to P-9-i	Check No. 0084954	13,268.71	Admitted
P-9-j to P-9-k	Check No. 0084953	13,268.71	Admitted
P-9-l to P-9-m	Check No. 0084952	13,268.71	Admitted
P-9-n to P-9-o	Check No. 0084951	20,206.61	Admitted

As can be gleaned above, the amounts stated in Check Nos. 0084955, 0084959, and 0084960 will not be considered, for the following reasons:

1. Exhibits P-8-h and P-8-I, referring Check Nos. 0084959 and 0084960, were denied admission, and petitioner failed to submit the corresponding BIR Deposit Slip and Payment Form for the subject payments; and

---

[88] Memorandum (Petitioner), Docket – Vol. 2, p. 1010.

2. Exhibit P-9-g, referring to the Payment Form for Check No. 0084955, was also denied admission.

For easy reference, the breakdown of the refundable amount is presented in tabular form, to wit:

Exhibit No.	Check No.	Deposit Slip/Payment Form	Amount
P-8-a	0084952	P-9-l to P-9-m	₱13,268.71
P-8-a-1	0084951	P-9-n to P-9-o	20,206.61
P-8-b	0084953	P-9-j to P-9-k	13,268.71
P-8-c	0084954	P-9-h to P-9-i	13,268.71
P-8-e	0084956	P-9-d to P-9-e	13,268.71
P-8-f	0084957	P-9-b to P-9-c	13,268.71
P-8-g	0084958	P-9 to P-9-a	13,268.71
		Total	₱99,818.87

In view of the foregoing, it becomes unnecessary to address the other issues raised by petitioner in the instant Petition for Review.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED.**

Accordingly, the Letter-Decision dated July 9, 2018, which denied petitioner's Request for Reconsideration is hereby **ANNULLED** and **SET ASIDE**.

Furthermore, the FLD dated October 8, 2008 and Assessment Notice No. 067-06-103-341-236, assessing petitioner of deficiency income tax, VAT, and withholding tax, in the aggregate amount of ₱3,835,366.35 for TY 2006, and the Warrants of Garnishment dated November 28, 2012 issued against petitioner, are **CANCELLED** and **SET ASIDE**.

Finally, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of ₱99,818.87 paid as compromise settlement.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson, Special 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice