REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

ESPER R. VARGAS, JR.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8750

Members:
BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, ***JJ.***

Promulgated:

MAR 08 2016
2:02 p.m.

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DECISION

BAUTISTA, J:

The Case[1]

This case involves a Petition for Review filed on December 23, 2013 pursuant to *Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[2], which seeks to annul the deficiency income tax and value-added tax ("VAT") assessments for calendar year ("CY") 2007 issued by respondent in the aggregate amount of Php99,478,226.19, inclusive of interest, surcharges, and penalties.[3]

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[1] *Records, CTA Case No. 8750,* pp. 14-34 with Annexes.

[2] A.M. No. 05-11-07-CTA (2005). The relevant provision states:

> **Sec. 4. *Where to appeal; mode of appeal.*** – (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for of Customs, the Secretary of Finance, the Secretary of Trade & refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] *Records, Pre-Trial Order ("PTO"),* p. 262.

The Parties

Petitioner is Filipino, of legal age, married, and with residential address at Lot 27 Block 83 Pio del Pilar Street, Concepcion II, Marikina City, Metro Manila.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), with principal office address at the 5th Floor, BIR National Office Building, Diliman, Quezon City.[5] She is vested with the power to decide tax cases, including disputed assessments pursuant to *Section 4 of the 1997 National Internal Revenue Code ("NIRC")*[6].

The Facts

It is undisputed that respondent did not issue a Letter of Authority ("LOA") to her revenue examiners to examine or assess petitioner for any CY 2007 tax liability/ies.[7]

On July 1, 2009, respondent issued a Letter Notice ("LN") under LN No. 045-RLF-07-00-00063 against petitioner stating that based on the computerized matching conducted by the BIR from third party sources *vis-à-vis* petitioner's declarations *per* VAT returns, petitioner under-declared his local purchases for CY 2007 in the amount of Php107,568,674.75, a copy of which was sent to Petitioner at B4 L14 Catleya Modesta Village, San Mateo, Rizal 1820 ("Rizal address").[8]

In the LN, respondent attributed to petitioner the 2007 sales of Nestle Philippines, Inc. ("Nestle") to Cazemart, Inc. ("Cazemart"),[9] and assessed deficiency income tax and VAT against petitioner based

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[4] *Records, PTO,* p. 262; *Records, Joint Stipulation of Parties ("JSP"),* p. 253; *Records, Petition for Review ("PFR"),* p. 15.

[5] *Records, PTO,* p. 262; *Records, JSP,* p. 253; *Records, Respondent's Pre-Trial Brief,* p. 95.

[6] Republic Act No. 8424, as amended (1997).

[7] *Records, PTO,* p. 262.

[8] *BIR Records, Exhibits* "P-2" and "R-2," pp. 1-2.

[9] According to the testimony of petitioner's witness, Emelita R. Manalastas [*see* Transcript of Stenographic Notes ("TSN"), January 30, 2014, pp. 18-19], petitioner is the President of Ca[z]emart, which in turn had dealings with Nestle, and on which respondent's assessment is based; *Records, PTO,* p. 263.

on data obtained from Nestle's records of purchases and sales to Cazemart.[10]

On October 5, 2010, respondent issued a Follow-up Letter addressed to petitioner stating that due to the latter's lack of action on the LN, the letter serves as a final notice that the former will conduct an appropriate review or assessment for the discrepancy indicated in the LN dated July 1, 2009.[11] A copy of the letter was sent to petitioner at the Rizal address.[12]

On October 18, 2010, respondent issued a Notice of Informal Conference ("NIC") for deficiency income tax, VAT, and withholding tax for CY 2007, a copy of which was sent to petitioner at the Rizal address.[13]

On June 24, 2011, respondent issued a Preliminary Assessment Notice ("PAN") for deficiency income tax and VAT for CY 2007, a copy of which was sent to petitioner at the Rizal address.[14]

On July 20, 2011, respondent issued a Final Assessment Notice ("FAN") with attached Assessment Notices for deficiency income tax and VAT for CY 2007, a copy of which was sent to petitioner at the Rizal address.[15]

On June 25, 2013, respondent issued a Preliminary Collection Letter ("PCL") for the collection of the deficiency income tax and VAT for CY 2007, a copy of which was sent to petitioner at the Rizal address.[16]

On July 10, 2013, respondent issued a Final Notice before Issuance of Warrant of Distraint and Levy, a copy of which was sent to petitioner at the Rizal address.[17]

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[10] *Records, PTO*, p. 263; *BIR Records, Exhibits* "P-2" and "R-2," p. 1.
[11] *BIR Records, Exhibits* "P-13" and "R-4," pp. 3-4.
[12] *BIR Records, Exhibit* "R-5," p. 4.
[13] *BIR Records, Exhibits* "P-3" and "R-6," pp. 5-6.
[14] *BIR Records, Exhibits* "R-10" and "R-11," pp. 31-33.
[15] *BIR Records, Exhibits* "P-4" "R-13," "R-14," and "R-15," pp. 34-37.
[16] *BIR Records, Exhibit* "R-1," p. 43.
[17] *BIR Records, Exhibit* "P-5," p. 44.

On November 12, 2013, respondent issued a Warrant of Distraint and/or Levy ("WDL") under WDL No. 10-1277-13, which was served constructively to petitioner on November 12, 2013, for the reason that petitioner could not be contacted, hence, nobody could have received the same.[18] A copy of the WDL was sent to petitioner at the Rizal address.[19]

Subsequently, respondent issued Warrants of Garnishment addressed to several commercial banks.[20] On November 22, 2013, the Bank of the Philippine Islands ("BPI") advised respondent that the bank had in its possession Php433,926.95 under the name of petitioner.[21]

On November 20, 2013, BPI wrote a letter informing petitioner that BPI took note of respondent's Notice of Garnishment,[22] which letter was received by petitioner on November 25, 2013.[23] On the same date, petitioner, through his personal accountant Ms. Emelita R. Manalastas, secured a copy from the BIR of the FAN with attached Assessment Notices for deficiency income tax and VAT for CY 2007.[24]

Respondent thus issued and enforced the Warrant of Garnishment against the bank accounts of petitioner with BPI prior to petitioner's receipt of the FAN.[25]

Within thirty (30) days from securing a copy of the FAN, or on December 23, 2013, petitioner filed the instant Petition for Review, with an application for Temporary Restraining Order ("TRO") and Writ of Preliminary Injunction.[26]

On January 15, 2014, respondent issued a letter addressed to BPI for the preparation of a check payable to the BIR in the amount of Php433,926.95.[27] Thereafter, respondent caused to be released from

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[18] *BIR Records, Exhibit* "R-1," p. 48.
[19] *Id.*
[20] *BIR Records, Exhibit* "R-1," pp. 50-52; *Exhibit* "P-6," p. 55.
[21] *BIR Records, Exhibit* "R-1," p. 56.
[22] *Records, Exhibit* "P-1," p. 202.
[23] *Records, Judicial Affidavit ("JA") of Mr. Esper R. Vargas, Jr., Exhibit* "P-14," p. 122; *JA of Ms. Emelita R. Manalastas, Exhibit* "P-15," p. 39.
[24] *Records, JA of Mr. Esper R. Vargas, Jr., Exhibit* "P-14," pp. 122-123.; *JA of Ms. Emelita R. Manalastas, Exhibit* "P-15," pp. 39-40.
[25] *Records, PTO,* pp. 263-264.
[26] *Records, PFR,* pp. 14-34, with Annexes.
[27] *BIR Records, Exhibit* "P-8."

the deposit accounts of petitioner with BPI the aggregate amount of Php433,926.95.[28]

On January 29, 2014, respondent filed her Comment on Petitioner's Application for the Issuance of TRO and/or Writ of Preliminary Injunction with Motion to Dismiss.[29] Petitioner filed his Reply/Opposition (to Respondent's Comment with Motion to Dismiss dated January 27, 2014) on February 13, 2014[30], and a Supplement to Petitioner's Reply/Opposition to Respondent's Comment with Motion to Dismiss Dated January 27, 2014 was likewise filed by petitioner on February 24, 2014[31].

In a Resolution promulgated on February 28, 2014, the Court denied respondent's Motion to Dismiss.[32]

On March 3, 2014, respondent filed her Answer[33] interposing the following Special and Affirmative Defenses:[34]

> 8. The Honorable Court has no jurisdiction over the case. The FAN was not validly protested.
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> 9. The Petitioner alleged in his petition that he received the [FAN] only on November 25, 2013, however, he failed to protest to the Commissioner or his authorized representative said FAN within 30 days from date of receipt of the same. Instead, the petitioner directly filed a Petition for review with the Honorable Court within thirty days (30) from receipt of the same. Consequently, the Honorable Court has no jurisdiction over the Petitioner's Petition for Review.
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> Sec. 228 of the Tax Code and Section 3.1.5 of Revenue Regulation No. 12-99 provides as follows:
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> SEC. 228. Protesting of Assessment. -
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> xxx xxx xxx

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[28] *Records, PTO,* p. 263.
[29] *Records,* pp. 49-59.
[30] *Id.* at 65-73.
[31] *Id.* at 74-78.
[32] *Id.* at 80-82.
[33] *Id.* at 85-92.
[34] *Id.* at 86-90.

> *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.*
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> xxx xxx xxx
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> "3.1.5. *Disputed Assessment.* ***The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notices within thirty (30) days from date of receipt thereof.*** *If there are several issues involved in the formal demand letter and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed assessment. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto. The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said revenue officer shall state this fact in his report of investigation.* ***If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. If the protest is denied in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.*** *Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the*

> *Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner. If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable."*

10. In the OCEANIC WIRELESS NETWORK, INC. VS. COMMISSIONER OF INTERNAL REVENUE, THE COURT OF TAX APPEALS and THE COURT OF APPEALS, GR NO. 148380 dated December 9, 2005, the Supreme Court held:

> **"The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and rule upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Appeals.** Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof."

11. In the case of Ferdinand R. Marcos II, petitioner vs. Court of Appeals, The Commissioner of the Bureau of Internal Revenue and Herminia D. De Guzman, respondents. G.R. No. 120880, June 5, 1997, the Supreme Court ruled that:

> "It has been repeatedly observed, and not without merit, that the enforcement of tax laws and the collection of taxes, is of paramount importance for the sustenance of government. Taxes are the lifeblood of the government and should be collected without unnecessary hindrance. However, 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 interest of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.[ ]
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> "Since the estate tax assessment had become final and unappealable by the petitioner's default as

> regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 of the NIRC on protests on assessment of internal revenue taxes."

12. Thus, respondent submits that the Honorable Court has no jurisdiction to grant the ancillary remedy prayed for by petitioner. This is based on the simple fact that the Honorable Court has no jurisdiction over the main action. The Honorable Court has no jurisdiction over the subject matter; in consequence, it is powerless to grant an ancillary remedy therein. (PABLO DE JESUS, ENGRACIA DE JESUS AND MANUELA DE JESUS VS. HON. GREGORIA N. GARCIA, Judge of the City Court of manila, Branch I, The Shell Company of the Philippines, LTD., Maxima de Jesus and Salvador Barrios, GR No. L-26816 February 28, 1967.)

13. An injunction may be allowed, in those cases when a timely appeal was filed before the CTA, to suspend the collection of taxes "if the applicant can prove that there is a clear and unmistakable right sought to be protected by the suspension of collection of taxes. (G.R. No. 168584 Republic of the Philippines vs. Ramon S. Caguioa October 10, 2007);

14. Assuming that the Honorable Court has jurisdiction over the subject matter, the petitioner is not legally entitled to an order enjoining the collection of taxes. The grounds for issuance of preliminary injunction are provided in Section 3, Rule 58 of the 1977 Rules on Civil procedure which states:

> "Sec. 3. *Grounds for issuance of preliminary injunction.* - A preliminary injunction may be granted when it is established:
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> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
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> (b) That the commission, continuance or non performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment effectual."

15. "For a writ of preliminary injunction to issue, the plaintiff must be able to establish that (1) there is a clear and unmistakable right to be protected, (2) the invasion of the right sought to be protected is material and substantial, and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. Conversely failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction, or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, is a sufficient ground for denying the preliminary injunction." (Republic of the Philippines vs. Ramon S. Caguioa G.R. No. 168584, October 10, 2007);

16. In the case of Sec. Emilia T. Boncodin of the Department of Budget and Management vs. National Power Corporation Employees Consolidated Union, the Honorable Supreme Court held:

> **"A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law.**
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> **Absent any clear and unquestioned legal right, the issuance of an injunctive writ would constitute grave abuse of discretion**. Injunction is not designed to protect contingent, abstract or future rights whose existence is doubtful or disputed. **It cannot be grounded on the possibility of irreparable damage without proof of an actual existing right. Sans that proof, equity will not take cognizance of suits to establish title or lend its preventive aid by injunction"** [ ]

17. The burden is on the petitioner to show a "clear legal right". Petitioner failed to prove the existence of a "clear legal right" that need to be protected. As it has been held, irreparable damage without proof of an actual existing right cannot be a ground for the issuance of a writ of preliminary injunction.

> 18. Even assuming per arguendo, that petitioner has a clear legal right, he failed to prove that he will suffer an irreparable damage. His assertions/claims that he will suffer intolerable injuring are "self-serving".

Respondent and petitioner filed their Pre-Trial Briefs on March 17, 2014[35] and April 7, 2014[36], respectively.

On, May 26, 2014, the parties filed their Joint Stipulation of Parties ("JSP").[37] Accordingly, a Pre-Trial Order was issued by this Court on June 18, 2014.[38]

Thereafter, the parties presented their respective evidence.

On August 11, 2014, petitioner filed its Formal Offer of Evidence.[39] Upon perusal of the records, the Court notes that petitioner's Formal Offer of Evidence has yet to be resolved. Thus, after review and finding no opposition from respondent, the Court hereby **ADMITS** ***Exhibits*** **"P-1," "P-2," "P-3," "P-4," "P-5," "P-6," "P-7," "P-8," "P-9," "P-10," "P-11," "P-12," "P-13," "P-14," "P-14-A," "P-15,"** and **"P-15-A,"** subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

In a Resolution promulgated on August 26, 2014, this Court granted petitioner's application for the issuance of a TRO and/or Writ of Preliminary Injunction conditioned upon the posting of the surety bond.[40]

On September 10, 2014, petitioner filed an Urgent Motion for Reconsideration (of the Resolution dated August 26, 2014) praying that respondent be enjoined from collecting the alleged deficiency taxes without the posting of a bond as a condition precedent,[41] which was later denied by the Court in a Resolution dated November 7,

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[35] *Id.* at 95-98.
[36] *Id.* at 222-231.
[37] *Id.* at 253-257.
[38] *Id.* at 262-267.
[39] *Id.* at 302-306.
[40] *Id.* at 311-315.
[41] *Id.* at 316-321.

2014[42]. Additionally, on November 26, 2014, the issuance of a TRO and Preliminary Injunction or Suspension of Payment was lifted and set aside due to petitioner's failure to post the required bond.[43]

On October 24, 2014, respondent filed her Formal Offer of Evidence[44], which was resolved by the Court in a Resolution dated December 19, 2014[45].

In compliance with this Court's Resolution dated February 9, 2015, which ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof,[46] respondent and petitioner filed their memoranda on February 25, 2015[47] and March 4, 2015[48], respectively.

On March 11, 2015, this Court promulgated a Resolution submitting the case for decision,[49] hence, this Decision.

The Issues[50]

The issues for consideration of the Court are, as follows:

1. WHETHER THE COURT HAS JURISDICTION OVER THE CASE;

2. WHETHER RESPONDENT COMPLIED WITH THE DUE PROCESS REQUIREMENT UNDER THE *1997 NIRC* AND *REVENUE REGULATIONS ("RR") NO. 12-99*[51];

3. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF PHP27,567,051.61 AND VAT

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[42] *Id.* at 335-336.
[43] *Id.* at 339-340.
[44] *Id.* at 326-330.
[45] *Records*, pp. 351-352; *Exhibits* "R-1," "R-2," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12," "R-13," "R-14," "R-15," "R-16," "R-17," "R-17-a," and "R-18" were admitted.
[46] *Records*, pp. 364-365.
[47] *Id.* at 366-377.
[48] *Id.* at 378-412.
[49] *Id.* at 414.
[50] *Records, PTO*, p. 263.
[51] September 6, 1999.

IN THE AMOUNT OF PHP71,911,174.58, INCLUSIVE OF INTEREST, FOR CY 2007;

4. WHETHER THE DEFICIENCY INCOME TAX AND VAT ASSESSMENTS AGAINST PETITIONER FOR CY 2007 HAVE BECOME FINAL, EXECUTORY, AND DEMANDABLE; AND

5. WHETHER RESPONDENT IS LIABLE TO PAY PETITIONER THE FILING FEES AND ATTORNEY'S FEES PETITIONER INCURRED IN CONNECTION WITH THIS CASE.

Petitioner's Arguments[52]

Petitioner avers that the Court has jurisdiction over the case pursuant to *Sections 7(a)(1) and 9 of Republic Act ("RA") No. 9282* in relation to *Section 3(a), Rule 4 of the RRCTA*, which provide that the appellate jurisdiction of the Court of Tax Appeals ("CTA") extends to void assessments issued in violation of petitioner's rights to due process and equal protection of the law under "other matters arising under the [NIRC] or other laws administered by the [BIR]."

Petitioner also argues that respondent failed to comply with the due process requirements under the *1997 NIRC* and *RR No. 12-99*.[53] Citing *Commissioner of Internal Revenue ("CIR") v. Metro Star Superama, Inc.*[54], petitioner highlighted the requirement that a taxpayer must be informed in writing of his liability for deficiency taxes, which must be appropriately received by the taxpayer. For failure to comply with the due process requirements, the assessments against petitioner are null and void, and could not become final, executory, and demandable. Petitioner is, thus, not liable for the deficiency assessment for income tax and VAT for CY 2007.

Finally, petitioner posits that respondent is liable to pay the former actual damages in the form of filing fees and attorney's fees for respondent's wanton, reckless, and oppressive assessment, and cynical garnishment of petitioner's accounts with BPI resulting in petitioner having to incur expenses to protect his interests.

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[52] *Records, Petitioner's Memorandum,* pp. 378-412.
[53] September 6, 1999.
[54] G.R. No. 185371, December 8, 2010, 637 SCRA 633.

Respondent's Counter-Arguments[55]

Respondent counters that petitioner should have filed a protest to the FAN instead of filing the Petition for Review directly with this Court within thirty (30) days from receipt of the FAN. This Court, thus, has no jurisdiction over the case, as what should be appealed to the CTA is the decision of respondent on the taxpayer's protest, and not the assessment itself.

Respondent further argues that considering petitioner's failure to protest the FAN, the assessment has become final, executory, and demandable.

Finally, respondent highlighted that tax assessments are presumed correct and made in good faith. Accordingly, in the absence of proof to the contrary, an assessment duly made will not be disturbed.

The Ruling of the Court

The Court in Division has jurisdiction over the present case under the term "other matters" pursuant to *Section 7(a)(1) of RA No. 1125* and *Section 3(a)(1), Rule 4 of the RRCTA.*

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine certain controversies."[56] The CTA, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.[57]

Section 7(a)(1) of RA No. 1125, as amended[58], provides that this Court has exclusive appellate jurisdiction to review by appeal decisions of the CIR involving disputed assessments or other matters arising under the *NIRC*, as follows:

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[55] *Records, Respondent's Memorandum*, pp. 366-377.
[56] *Guy v. Court of Appeals*, G.R. Nos. 165849, 170185, 170186, 171066 & 176650, December 10, 2007, 539 SCRA 584.
[57] *CIR v. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014, 718 SCRA 513.
[58] June 16, 1954.

> **Sec. 7.** ***Jurisdiction.*** — The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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 or other laws administered by the Bureau of Internal Revenue;[59]

On the other hand, *Section 3(a)(1), Rule 4 of the RRCTA* implements the foregoing by stating that the CTA, in Division, has exclusive original or appellate jurisdiction to review by appeal the decisions of the CIR involving disputed assessments or other matters arising under the *NIRC*, to wit:

> **Sec. 3.** ***Cases within the jurisdiction of the Court in Divisions.*** —
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> The Court in Divisions shall exercise:
>
> (a) Exclusive original 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;[60]

The term "disputed assessment" covers assessments wherein the taxpayer is accorded the opportunity to challenge the same, which presupposes that a valid assessment was issued by respondent. Under *RR No. 12-99*, the taxpayer whose protest is denied in whole or in part by the CIR may appeal such denial to the CTA within thirty (30) days from receipt of such denial.[61] Compliance

[59] Underscoring ours.
[60] Underscoring ours.
[61] § 3.1.5.

with the procedure outlined in *RR No. 12-99* is necessary for the CTA to acquire jurisdiction over the assessment.[62] Thus, in *Oceanic Wireless Network, Inc. v. CIR*[63], the Supreme Court held:

> The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.[64]

On the other hand, the term "other matters" may include the following: prescription of the CIR's right to collect taxes,[65] determination of the validity of a warrant of distraint and levy issued by the CIR,[66] and validity of a waiver of the statute of limitations[67].

In *CIR v. Hambrecht & Quist Philippines, Inc.*[68], the Supreme Court had occasion to dissect the jurisdiction of the CTA, as follows:

> xxx [W]e have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).
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[62] *See SMI-Ed Philippines Technology, Inc. v. CIR,* G.R. No. 175410, November 12, 2014, 739 SCRA 691; *Rizal Commercial Banking Corporation v. CIR,* G.R. No. 168498, April 24, 2007, 522 SCRA 144; *Oceanic Wireless Network, Inc. v. CIR,* G.R. No. 148380, December 9, 2005, 513 Phil. 317.
[63] G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[64] Underscoring ours.
[65] *CIR v. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010, 635 SCRA 162; *Jacinto-Henares v. Atlas Consolidated Mining and Development Corporation,* CTA *EB* No. 1101 (CTA Case No. 8150), August 14, 2015.
[66] *Philippine Journalists, Inc. v. CIR,* G.R. No. 162852, December 16, 2004, 447 SCRA 214; *CIR v. Abundance Providers and Entrepreneurs Corporation,* CTA *EB* No. 999 (CTA Case No. 8040), August 18, 2014.
[67] *Philippine Journalists, Inc. v. CIR,* G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[68] G.R. No. 169225, November 17, 2010, 635 SCRA 162.

> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
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> To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.[69]

Similarly, *Phinma Property Holdings Corporation v. CTA*[70] elaborated on the term "other matters" in this wise:

> In line with the principle of *"ejusdem generis,"* the term "other matters" in regard to the respondent court's jurisdiction could be those cases which do not necessarily involve disputed assessments or refunds of internal revenue taxes, fees or other charges, penalties in relation thereto or those related to customs protest or forfeiture cases but controversies which are still within the scope of the functions of the BIR and Customs.[71]

It can be gathered from the foregoing that the present case cannot be deemed a disputed assessment, which would require a protest before the same may be brought before the Court, considering the fact that no assessment was validly issued by respondent (as will be discussed subsequently). Furthermore, assuming that a valid assessment was made by respondent, the subsequent collection proceedings commenced by respondent would render nugatory any

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[69] Underscoring ours.
[70] CA-G.R. SP No. 38666, October 25, 1996.
[71] Underscoring ours.

protest to be made by petitioner on the FAN. Based on the records, petitioner learned of the garnishment on the same day it secured a copy of the FAN. If petitioner would be required to protest the FAN, as suggested by respondent, any such protest would be futile as the assessment was already being collected on by respondent - *i.e.*, respondent already considers the assessment final, executory, and demandable.

The primordial issue in this case is the validity of the issuance of the assessment, and whether the same may be collected on. These are matters which are provided for in *Sections 228, 207(A), and 208 of the 1997 NIRC*, as follows:

> **Sec. 228**. ***Protesting of Assessment.*** — <u>When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings</u>: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> <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
>
> **Sec. 207**. ***Summary Remedies.*** —
>
> (A) *Distraint of Personal Property.* — Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (P1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (P1,000,000) or less, shall seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property of such persons in sufficient quantity to satisfy the tax, or charge, together with any increment thereto incident to delinquency, and the expenses of the distraint and the cost of the subsequent sale.
>
> xxx xxx xxx

> **Sec. 208.** ***Procedure for Distraint and Garnishment.*** – The officer serving the warrant of distraint shall make or cause to be made an account of the goods, chattels, effects or other personal property distrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.
>
> xxx xxx xxx
>
> Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.[72]

In *Philippine Journalists, Inc. v. CIR*[73], the taxpayer therein denied receiving the assessment and filed the Petition for Review with the CTA after receipt of the WDL. The Supreme Court ruled that the CTA has jurisdiction to determine the validity of the WDL, thus:

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.[74]

Similar to the taxpayer in the *Philippine Journalists* case, petitioner herein did not receive the assessment and brought the case to the CTA after notice of the issuance of the Warrant of Garnishment on its BPI account.

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[72] Underscoring ours.
[73] G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[74] Underscoring ours; *Philippine Journalists, Inc. v. CIR*, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

Applying the foregoing discussion and considering the fact that the Petition for Review filed by petitioner involves matters falling under the exclusive appellate jurisdiction of the CTA in Division, this Court has jurisdiction to settle the present controversy.

The assessments made against petitioner are void for failure to comply with due process, and cannot be final, executory, and demandable.

The second, third, and fourth issues to be resolved by this Court boil down to the validity and enforceability of the assessments made by respondent. The Court answers in the negative - the assessments are void and unenforceable.

It is elementary that a taxpayer must actually receive any assessment issued by respondent in order for the same to be valid.[75] While the presumption exists that constructive service of an assessment - provided the same is properly addressed with postage prepaid and is actually mailed - is received by the taxpayer in the ordinary course of mail, the same is merely a disputable presumption, which can be directly denied by the taxpayer.[76] In such an instance, respondent has the burden of proving that the assessment was indeed received by the taxpayer.[77]

The facts of this case show that the assessments made against petitioner, and the subsequent collection thereon, were made in

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[75] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126; *Estate of the Late Juliana Diez Vda. De Gabriel v. CIR*, G.R. No. 155541, January 27, 2004, 421 SCRA 266; *CIR v. United International Pictures AB*, CA-G.R. SP No. 73200, June 22, 2006; *Pundanera v. CIR*, CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR*, CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR*, CTA Case No. 8264, May 19, 2014.
[76] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126; *CIR v. United International Pictures AB*, CA-G.R. SP No. 73200, June 22, 2006; *Pundanera v. CIR*, CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR*, CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR*, CTA Case No. 8264, May 19, 2014.
[77] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126; *CIR v. United International Pictures AB*, CA-G.R. SP No. 73200, June 22, 2006; *Pundanera v. CIR*, CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR*, CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR*, CTA Case No. 8264, May 19, 2014.

violation of petitioner's right to due process. Petitioner had no opportunity to assail the assessment made by respondent as he was not even aware that an assessment had been made against him. Notices, letters, and other communications pertaining to the assessment and the subsequent collection thereon were sent by respondent to petitioner purportedly to the latter's address either by registered mail or by constructive delivery, if at all. There is no proof that petitioner was informed of the CY 2007 assessment up until BPI informed petitioner on November 25, 2013 of the garnishment made on his account.

As applied to the present case and following the provisions of *Revenue Memorandum Order ("RMO") No. 42-03,*[78] *RR No. 12-99,* and the *1997 NIRC* on assessments made under the Reconciliation of Listing for Enforcement auditing system, the following were the documents issued by respondent and the modes by which the same were furnished to petitioner:

1. LN dated July 1, 2009, which was sent to petitioner at the Rizal address on August 26, 2010 by registered mail;[79]

2. Follow-up letter dated October 5, 2010, which was sent to petitioner at the Rizal address on October 14, 2010 by registered mail;[80]

3. NIC dated October 18, 2010, which was sent to petitioner at the Rizal address on November 3, 2010 by registered mail;[81]

4. PAN dated June 24, 2011, which was sent to petitioner at the Rizal address on December 5, 2011 by registered mail, and allegedly received by petitioner from the postmaster on December 12, 2011;[82]

5. FAN dated July 20, 2011, which was sent to petitioner at the Rizal address on February 19, 2012 by registered mail, and allegedly received by petitioner from the postmaster on February 19,

[78] October 23, 2003.
[79] *BIR Records, Exhibits* "P-2" and "R-2," pp. 1-2.
[80] *BIR Records, Exhibits* "P-13," "R-4" and "R-5" pp. 3-4.
[81] *BIR Records, Exhibits* "P-3" and "R-6," pp. 5-6.
[82] *BIR Records, Exhibits* "R-10," "R-11," and "R-12," pp. 31-33.

2012[83] but a copy of which petitioner was able to secure only on November 25, 2013;[84]

6. PCL dated June 25, 2013, which was sent to petitioner at the Rizal address on July 2, 2013 by registered mail;[85]

7. Final Notice dated July 10, 2013, which was sent to petitioner at the Rizal address on July 17, 2013 by registered mail;[86]

8. WDL dated November 12, 2013, which was served constructively on petitioner at the Rizal address on November 12, 2013;[87] and

9. Warrant of Garnishment, which was not furnished to the taxpayer.[88]

The testimonies of petitioner's witnesses, Ms. Emelita R. Manalastas[89] and petitioner Mr. Esper R. Vargas, Jr.[90] himself, highlight the fact that petitioner had no knowledge of the assessment as he did not, and could not have, received the same at the Rizal address used by respondent considering the fact that petitioner's business located at said address had already closed since 1999. Witness Emelita R. Manalastas explained in this wise:[91]

JUSTICE LIBAN

In the first place, did you receive anything from the BIR before the garnishment?

MS. MANALASTAS

None, Your Honors.

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[83] *BIR Records, Exhibits* "P-4," "R-13," "R-14," "R-15," and "R-16," pp. 34-37.
[84] *Records, JA of Mr. Esper R. Vargas, Jr., Exhibit* "P-14," p. 122; *JA of Ms. Emelita R. Manalastas, Exhibit* "P-15," p. 39.
[85] *BIR Records, Exhibit* "R-1," p. 43.
[86] *BIR Records, Exhibit* "P-5," p. 44.
[87] *BIR Records, Exhibit* "R-1," p. 48.
[88] *BIR Records, Exhibit* "R-1," pp. 50-52, 56; *Exhibit* "P-6," p. 55.
[89] *Records, Exhibit* "P-15," pp. 37-44; *Transcript of Stenographic Notes ("TSN")*, January 30, 2014.
[90] *Records, Exhibit* "P-14," pp. 121-132, 162-173; *TSNs*, March 24, 2014 and July 10, 2014.
[91] *TSN*, January 30, 2014, pp. 14-18.

xxx xxx xxx

JUSTICE BAUTISTA

The assessment notice was dated July 20, 2011, this was received apparently by the employee of Mr. Esper Vargas [ ], the assessment notice was received by Esper Vargas in 2012, there is a registry return receipt photo copied by Ms. Manalastas and it was dated January, 2012?

MS. MANALASTAS

We do not know the person who signed and received the Final Assessment Notice.

JUSTICE BAUTISTA

You do not know but there was a return receipt, apparently signed by an employee of Mr. Vargas.

MS. MANALASTAS

But he is not an employee because the place is only a storage.

JUSTICE BAUTISTA

How do you know that he is not an employee?

MS. MANALASTAS

Because he has no business anymore.

JUSTICE BAUTISTA

Who?

MS. MANALASTAS

Mr. Vargas?

JUSTICE BAUTISTA

He has no business anymore, as to when?

MS. MANALASTAS

1999.

JUSTICE BAUTISTA

But the assessment was made in 2011?

MS. MANALASTAS

Yes, the assessment was made in 2011.

JUSTICE BAUTISTA

And Mr. Vargas failed to file the protest letter on the Final Notice, so the assessment becomes final and executory, that is why there is a Notice of Garnishment. But there is a return receipt photo copied by Ms. Manalastas, there is somebody who signed for Mr. Vargas.

ATTY. FONDEVILLA

The witness testified on re-direct that they don't know the signature appearing on that registry return receipt.

JUSTICE BAUTISTA

How do you know that they don't know?

ATTY. FONDEVILLA

She said on re-direct, Your Honors.

JUSTICE BAUTISTA

Why you don't know his signature?

MS. MANALASTAS

We are not familiar with the signature, Your Honors.

JUSTICE BAUTISTA

Why you don't know the signature?

MS. MANALASTAS

Because we don't know who signed.

Considering petitioner denied having received the assessment, the burden is on respondent to prove, with substantial evidence, the receipt thereof by petitioner. As discussed above, the presumption of regularity in the ordinary course of mail is merely disputable. Thus, when the taxpayer-addressee denies the receipt of the disputed assessment issued by respondent - delivered and served through registered mail - the burden of proof is now shifted to respondent to present and offer evidence to prove that the same was duly delivered and actually received by the taxpayer-addressee.

A perusal of the records shows that respondent failed to present evidence that petitioner actually received the assessments. Respondent's witness, Ms. Betty B. Esplana, confirmed the manner by which respondent furnished petitioner the various communications, and testified that respondent merely assumed petitioner duly received the same at the address stated in the BIR's records and petitioner's Tax Declaration in this wise:[92]

ATTY. FONDEVILLA

All right. You also said that you, in paragraph 16 or rather paragraph 15 of your Judicial Affidavit, you said that you went to the address specified in the letter notice for purposes of serving the letter notice and that since no one was in the given address, [you] left the other copy of the letter notice in the mail box and served the other copy through registered mail.

Q Did you ascertain the fact that it was duly served to the petitioner, that letter notice?

MS. ESPLANA

A Yes, I thought I did my best to serve the letter notice and since there was no one in that address, no one was in the address but I asked the neighborhood that at night there is a person living there so I left the other copy to your mail box and the other copy for your registered mail.

ATTY. FONDEVILLA

Q To my mail box?

[92] *Records, JA of Betty B. Esplana, Exhibit* "R-17," pp. 101-106; *TSN,* October 16, 2014, pp. 13-21, 32-33.

MS. ESPLANA

A Mail box of the petitioner Esper Vargas. The fact is I got also from the Assessor's Office a copy of tax declaration that the place given to the BIR address is also their address of the *ano*, taxpayer.

ATTY. FONDEVILLA

Q But it was not actually received? Nobody received it, according to you there is no one . . . Interrupted

MS. ESPLANA

A We thought that *ano*, since that you, the address was given by the taxpayer to the BIR and we got a tax declaration that the place was the place, the property of the taxpayer then we know that the letter was received through the mail box and *ano* we did our best and there are no other address in the tax declaration in San Mateo so we thought that it was also *ano* received by them and we gave also a registered mail in order that there is assurance that the letter was received by the taxpayer.

ATTY. FONDEVILLA

Okay, Ms. Esplana, just to be clear.

Q You simply assumed that, right? You simply assumed . . . Interrupted

JUSTICE LIBAN

Just an assumption.

MS. ESPLANA

Assumption, *oo*.

ATTY. FONDEVILLA

Yes.

Q You simply assumed? It's an assumption.

ATTY. FONDEVILLA

That he received the letter that you left.

MS. ESPLANA

A Yes, because *per* tax declaration, the address given to the BIR is also their *ano,* their property.

JUSTICE LIBAN

Yes, but that is, the question now is you're just assuming that they received it?

MS. ESPLANA

Yes.

ATTY. FONDEVILLA

All right.

JUSTICE LIBAN

Next question.

ATTY. FONDEVILLA

Okay. In your exhibit marked as R-2, there is a photocopy of the registry receipt that was attached to the said exhibit.

Q Do you have the registry return card?

MS. ESPLANA

A We have the *ano, iyong* final assessment notice, there is.

ATTY. FONDEVILLA

No, no.

Q My question is, the letter notice dated July 01, 2009, do you have the registry return card with you by the Philippine Postal Office?

JUSTICE LIBAN

That's in Question No.?

ATTY. FONDEVILLA

2.

MS. ESPLANA

A Yes, the return was not attached, but this is the registry receipt.

ATTY. FONDEVILLA

Q There is no registry return receipt?

JUSTICE LIBAN

No registry return receipt.

MS. ESPLANA

Registry receipt.

ATTY. FONDEVILLA

Q There being no registry return receipt, there is no proof of actual receipt of your letter notice by the petitioner, right?

MS. ESPLANA

A Yes, we gave . . . Interrupted

ATTY. FONDEVILLA

Yes.

MS. ESPLANA

That *ano*, that position that the letter notice was not received but the final notice of the assessment, there is registry exhibit here that they received the final assessment notice.

ATTY. FONDEVILLA

That is the final assessment notice.

MS. ESPLANA

Yes.

JUSTICE LIBAN

Just answer the question. You know, one step at a time.

ATTY. FONDEVILLA

All right.

Q So you admit there was . . . Interrupted

MS. ESPLANA

A No, I am not admitting . . . Interrupted

JUSTICE LIBAN

We are on the letter notice.

MS. ESPLANA

That it was not received . . . Interrupted

ATTY. FONDEVILLA

All right. Okay. Very well then.

Q Then in Question No. 19 or rather 18, you were asked this question "Did the petitioner respond to your letter-notice?"

MS. ESPLANA

A No.

ATTY. FONDEVILLA

Q And your answer is no.

MS. ESPLANA

A Yes.

ATTY. FONDEVILLA

Q The petitioner did not respond. And so you sent a follow up letter dated October 05, 2010?

MS. ESPLANA

Yes.

ATTY. FONDEVILLA

Through registered mail which was attached to your Judicial Affidavit as Exhibit R-4.

Q Now would you say with certainty that this follow up letter was received by the petitioner?

MS. ESPLANA

A I don't have any certainty that they received but the fact that we have sent the letter in their address provided in the Bureau of Internal Revenue, we assumed that they also received the letter.

ATTY. FONDEVILLA

A It's an assumption?

MS. ESPLANA

A Yes.

ATTY. FONDEVILLA

Q In this Exhibit R-4, there is a registry receipt that was attached to it but there is no registry return card, right?

A Yes.

ATTY. FONDEVILLA

All right.

Q So you are not sure if that follow up letter was in fact received by the petitioner?

MS. ESPLANA

A Yes.

ATTY. FONDEVILLA

All right. So there is another document attached to your Judicial Affidavit which was marked as R-6 which is denominated as the Notice of Informal Conference dated October 18, 2010.

Q This same document was mailed to the petitioner, right? And in fact that is evidenced by a registry receipt. My question to you, Ms. Witness, is, do you have a registry return card for this . . . Interrupted

MS. ESPLANA

Notice?

ATTY. FONDEVILLA

Notice of Informal Conference.

MS. ESPLANA

A I cannot give you an answer if I have the registry return card.

ATTY. FONDEVILLA

Well you have the docket, you have your docket there in your . . . Interrupted

MS. ESPLANA

It was only the registry receipt. Only registry receipt.

ATTY. FONDEVILLA

Q No registry return card?

MS. ESPLANA

A *Oo.*

ATTY. FONDEVILLA

Q None?

MS. ESPLANA

A None.

ATTY. FONDEVILLA

Q So therefore you are not sure that that notice of informal conference dated October 18, 2010 was actually received by the petitioner?

MS. ESPLANA

A Yes.

xxx xxx xxx

ATTY. CORO

Re-direct.

Q With respect to the documents, letter notice, follow up letter, the Revenue Officer's Audit Report, the preliminary assessment notice and the final assessment notice, do you have any document that would prove that that is really the correct address of the petitioner?

MS. ESPLANA

A Yes, I have the documents.

ATTY. CORRO

Q Will you please tell this Honorable Court what documents you are referring to?

MS. ESPLANA

A This is the tax declaration I got in *ano*, San Mateo Municipal Assessor's Office. Their address there Lot 14, Block 4 Cattleya Street, Modesta Village, Sto. Nino, San Mateo and that was the registered address given to the Bureau of Internal Revenue of Marikina City.

ATTY. CORRO

Q So this is the correct address? The same address specified in all the notices . . . Interrupted

MS. ESPLANA

A Yes. Yes, ma'am.

From the foregoing, the conclusion can be made that no valid assessment was issued by respondent as petitioner did not receive the same. The assessment against petitioner for CY 2007 is clearly void for being violative of petitioner's right to due process. Considering that petitioner did not actually receive the assessment, the same cannot be considered final, executory, and demandable. Therefore, respondent's right to collect thereon has no basis.

Thus, in *CIR v. BASF Coating + Inks Phils., Inc.*[93], the Supreme Court ruled that a taxpayer cannot be deprived of his property if the basis for the collection is an invalid assessment, *i.e.*, when the taxpayer's right to due process is violated because no valid notice of assessment was sent to such taxpayer. The Supreme Court held:

> It might not be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. <u>An invalid assessment bears no valid fruit</u>. <u>The law imposes a substantive, not merely a formal, requirement</u>. <u>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</u>. <u>In the instant case, respondent has not properly been informed of the basis of its tax liabilities</u>. <u>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</u>.
>
> xxx xxx xxx
>
> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute

[93] G.R. No. 198677, November 26, 2014, 743 SCRA 113.

> perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[94]

Even assuming that the assessments are valid, in instances where the CIR cannot prove that service of the assessment was made on the taxpayer, the date when a taxpayer secures a copy of the assessment shall be considered the date of service of the assessment.[95] In this case, considering respondent could not prove that the assessment was duly served on petitioner, the date of service of the assessment shall be deemed the date when petitioner secured a copy of the same (*i.e.*, on November 25, 2013).

Under *Section 203 of the 1997 NIRC*, assessments shall be made within three (3) years from the last day prescribed by law for the filing of the return, or from the day the return was actually filed, whichever is later, thus:

> **Sec. 203.** ***Period of Limitation Upon Assessment and Collection.*** - Except as provided in Section 222, <u>internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without the assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[96]

Thus, as applied to the present case, the CY 2007 assessment had already prescribed by the time petitioner secured a copy of the FAN on November 25, 2013.

Moreover, it must be emphasized that respondent even admitted in the JSP that she issued and enforced the Warrant of

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[94] Underscoring ours.
[95] *CIR v. Paseo Insurance Agency, Inc.*, CA-G.R. SP No. 33526, February 24, 1995.
[96] Underscoring ours.

Garnishment against the bank account of petitioner with BPI prior to petitioner's receipt of the FAN.[97] Following *Section 4, Rule 129 of the Revised Rules of Court*[98], the admission made by respondent in the JSP is conclusive unless there is showing that the same was made through palpable mistake or that no such admission was made. As discussed in *Extraordinary Development Corporation v. Samson-Bico*[99]:

> A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding. . .
>
> xxx xxx xxx
>
> The Answer submitted by the heirs of Juan, as well as the testimony of Juan constitute judicial admissions. Well-settled is the rule that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made.

Thus, the foregoing show that the assessments made against petitioner for CY 2007 are void, and cannot be final, executory, and demandable.

Petitioner is not entitled to actual damages.

Finally, the Court shall now resolve the issue of whether respondent is liable for actual damages, in the form of filing fees and attorney's fees, resulting from the assessment.

The Court answers in the negative.

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[97] *Records, PTO*, pp. 253-254.

[98] Section 4, Rule 129 of the Revised Rules of Court state:

> **Sec. 4.** ***Judicial admissions.*** - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[99] G.R. No. 191090, October 13, 2014, 738 SCRA 147.

As a rule, attorney's fees and expenses of litigation cannot be recovered unless, among others, the claimant is compelled to litigate or incur expenses to protect his interest.[100] However, it is respondent's prime duty to perform tax assessments and tax collections. On the other hand, no compelling reason has been offered by petitioner for the award of filing fees and attorney's fees. Further, this Court has consistently disallowed the award of actual damages in tax cases.[101]

In the recent case of *Philko Peroxide Corporation v. CIR*[102], the Court explained the rationale, thus:

> Finally, with respect to petitioner's prayer for attorney's fees, it has been held that an award of attorney's fees is an exception and there must be some compelling legal reason to bring the case within the exception and justify the award. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.
>
> In the present case, petitioner did not present any compelling legal reason to justify the award of attorney's fees. In issuing the subject assessment, the respondent is merely exercising the authority accorded her under the Tax Code to collect taxes, and in so doing, fulfilling her mandated duty as required under the law. For after all, the primary duty of the BIR is to collect taxes, since taxes are the lifeblood of the Government and their prompt and certain availability are imperious needs. In fine, the prayer for attorney's fees is without any legal mooring.[103]

In any case, the Supreme Court has held in *Farolan, Jr. v. CTA*[104] that respondent cannot be made liable for actual damages as

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[100] *"An Act to Ordain and Institute the Civil Code of the Philippines,"* RA No. 386, art. 2208(2) (1950).
[101] *See The City of Makati v. Trans-Asia Power Generation Corporation,* CTA *EB* No. 1086 (CTA AC No. 87), January 21, 2015; *Spouses Estrada v. BIR,* CTA Case No. 7847, November 23, 2015; *Philko Peroxide Corporation v. CIR,* CTA Case No. 8500, August 20, 2015.
[102] CTA Case No. 8500, August 20, 2015.
[103] Underscoring ours.
[104] G.R. No. 42204, January 21, 1993, 217 SCRA 298.

respondent is immune from suit following the doctrine of sovereign immunity. The Supreme Court held:

> On the third issue, we opine that the Bureau of Customs cannot be held liable for actual damages that the private respondent sustained with regard to its goods. Otherwise, to permit private respondent's claim to prosper would violate the doctrine of sovereign immunity. Since it demands that the Commissioner of Customs be ordered to pay for actual damages it sustained, for which ultimately liability will fall on the government, it is obvious that this case has been converted technically into a suit against the state.
>
> On this point, the political doctrine that "the state may not be sued without its consent," categorically applies. As an unincorporated government agency without any separate juridical personality of its own, the Bureau of Customs enjoys immunity from suit. Along with the Bureau of Internal Revenue, it is invested with an inherent power of sovereignty, namely, taxation. As an agency, the Bureau of Customs performs the governmental function of collecting revenues which is definitely not a proprietary function. Thus, private respondent's claim for damages against the Commissioner of Customs must fail.[105]

From the foregoing, it is clear that petitioner is not entitled to actual damages in the form of filing fees and attorney's fees.

In sum, the Court finds that the assessments made against petitioner for CY 2007 are void and of no effect, with respondent not liable for damages.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Respondent's assessment for deficiency income tax and VAT for CY 2007 in the aggregate amount of Php99,478,226.19, inclusive of interest, surcharges, and penalties under the Final Assessment Notice dated July 20, 2011 issued pursuant to Letter Notice No. 045-RLF-07-00-00063, and the Warrant of Garnishment addressed to the Bank of Philippine Islands are hereby **CANCELLED** and **SET ASIDE**.

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[105] Underscoring ours.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice