REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FORT 1 GLOBAL CITY CENTER, INC.,
Petitioner,

-versus-

HON. CAESAR R. DULAY, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9490
For: Assessment

x---x

FORT 1 GLOBAL CITY CENTER, INC.,
Petitioner,

-versus-

HON. CAESAR R. DULAY, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9503
For: Assessment

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

SEP 2 4 2019
2:10 p.m.

x--x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on December 17, 2018 are the consolidated cases filed by Fort 1 Global City Center, Inc. on October 28, 2016 and December 5, 2016, seeking for the cancellation of the deficiency tax assessments against petitioner amounting to

₱134,099,378.74 and ₱1,598,860,663.45, for taxable years 2012 and 2009 respectively.

The facts as borne by the records of these consolidated cases are as follows:

Petitioner Fort 1 Global City Center, Inc. is a corporation duly organized and existing under Philippine laws with office address at Unit 2C-B FPS Building, 1st Avenue corner 30th Street, Global city, Taguig.[1]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue, BIR National Office, Diliman, Quezon City.

On July 1, 2009, petitioner sent a letter requesting the Bureau of Internal Revenue to issue a ruling to ascertain the taxability of the transfer of condominium and/or parking units from the trustee Fort1, to the trustor individual investors/unit owners of the Fort 1 Global City Center Condominium.[2]

In response to the said letter, the BIR issued Ruling No. DA (129) 375-2009 in favor of petitioner which confirmed that the transfer of condominium units and parking units from the trustee back to the trustor is a non-taxable transaction which is not subject to Capital Gains Tax, Income Tax, Value Added Tax, Withholding Tax, and Documentary Stamp Tax.[3]

Later, respondent issued a Preliminary Assessment Notice (PAN) dated January 24, 2012[4], stating that there has been found due from petitioner deficiency Income Tax, Value-Added Tax, Withholding Tax-One Time Transaction (ONETT) and Documentary Stamp Tax-ONETT for the year 2009, which petitioner contested in a letter dated February 10, 2012.[5]

Thereafter, petitioner issued a Final Assessment Notice (FAN) for taxable year 2009 dated July 20, 2012.[6]

---

[1] Exhibit "P-8"
[2] Par. 2, A. Facts, Pre-Trial Order (PTO), Docket, p. 266.
[3] Par. 3, A. Facts, PTO, Docket, p. 266.
[4] Exhibits "P-3" and "R-8".
[5] Exhibit "P-3-a".
[6] Exhibits "P-4" and "R-12".

L

Petitioner filed a protest to the FAN on July 31, 2012[7], while respondent issued a Final Decision on Disputed Assessment (FDDA) dated October 13, 2016,[8] informing petitioner that it is still liable to pay deficiency Income Tax, Value-Added Tax, Withholding Tax-One Time Transaction (ONETT) and Documentary Stamp Tax-ONETT for the year 2009, amounting to ₱691,379,263.88, ₱637,236,976.22, ₱66,006,122.14, ₱171,376,449.58 and ₱32,861,851.63, respectively.

As to the taxable year 2012, respondent issued a PAN dated February 3, 2016[9], and later on a FAN dated March 31, 2016[10]. In the FAN, respondent assessed petitioner for deficiency Income Tax and Value Added Tax for the taxable year 2012, amounting to ₱95,216,801.41 and ₱38,882,557.33, respectively.

Thereafter, petitioner filed its Letter Protest to the FAN dated March 31, 2016 on April 1, 2016[11], but respondent allegedly failed to act on the protest.

On October 28, 2016[12], petitioner appealed respondent's inaction to the protest on the March 31, 2016 FAN (for taxable year 2012), Docketed as CTA Case No. 9490. On the other hand, petitioner filed its judicial appeal on the FDDA dated October 13, 2016 (for taxable year 2009) before this Court on December 5, 2016[13], Docketed as CTA Case No. 9503.

Petitioner later filed an Amended Petition for Review in CTA Case No. 9490 on November 4, 2016.[14]

For his part, respondent separately filed by registered mail his Answers on both appeals on February 14, 2017 for CTA Case No. 9503 and on March 17, 2017[15], for CTA Case No. 9490[16], which were later on received by the Court on March 1, 2017 and April 5, 2017,

---

[7] Exhibit "P-4-a".
[8] Exhibit "R-14".
[9] Exhibits "P-5" and "R-24".
[10] Exhibits "P-6" and "R-26".
[11] Exhibit "P-6-a".
[12] CTA Case No. 9490, Docket, p. 10.
[13] CTA Case No. 9503, Docket, p. 10.
[14] CTA Case No. 9490, Docket, pp. 34-46.
[15] CTA Case No. 9503, Docket, pp. 102-110.
[16] CTA Case No. 9490, Docket, pp. 78-80.

h

respectively. In the said Answers, respondent interposed the following special and affirmative defenses:

For CTA Case No. 9490

"6. A revenue regulation, the issuance of which is authorized by statute, has the force and effect of law (*Vitug & Acosta, Tax Law and Jurisprudence, 3rd Edition, p. 55*);

7. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*)

8. At the outset, the Formal Assessment Notice dated March 15, 2016 and its corresponding Details of Discrepancies also dated March 15, 2016, reflect the all internal revenue tax liabilities of the petitioner for the taxable year 2012 and the factual and legal bases of the assessment made against the petitioner, as a result of its failure to pay Income Tax and Value Added Tax in the amount of ₱95,216,801.41 and ₱38,882,577.33 and the resulting compromise penalty/surcharges thereon.

9. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another. – **Non videtur quisquam id capere quod ei necesse est alii restitutere**."

For CTA Case No. 9503

"1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;

h

2. The petitioner claims that it was deprived of the procedural and substantive due process since the letter of authority and the assessments were not served to and received by it. This argument should be denied. This Court in the case of GST Philippines, Inc. vs. Commissioner of Customs and Secretary of Finance, C.T.A. Case No. 7133 citing Supreme Court case Haydee C. Casimiro vs. Filipino T. Tandog, G.R. No. 146137, June 08, 2005, held that:

> 'The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process'

In this case, the Petitioner was afforded due process because it was able to reply and/or file its protest to the notices that were issued or sent to it. Assuming, without necessarily admitting, that the notices were sent to the improper address, the petitioner was able to receive them because it responded and duly protested the assessment. Further, the petitioner was aware of the investigation because in its letter dated November 10, 2010, it even requested for an extension of time to comply with the Subpoena Duces Tecum dated October 28, 2010. Clearly, petitioner was given notice and the opportunity to present its side;

3. The contention of the Petitioner that the period to assess Fort 1 for the taxable year 2009 had already prescribed is misplaced. The running of the three (3) year statute of limitation as provided under Section 203 of the Tax Code is not applicable in this case. The petitioner failed and refused to make certain accounting records

L

available pursuant to the issued Subpoena Duces Tecum dated October 28, 2010 by the Assistant Revenue District Officer of Revenue District Office-44, Christina C. Barroga. The failure of the petitioner to comply with the said Subpoena resulted to a subsequent filing of a criminal complaint for violation of Sections 5 and 14, penalized under Section 266, in relation to Sections 253 and 256 of the Tax Code, to wit:

xxx xxx xxx

The filing of criminal complaint is a prima facie indication of fraud in accordance with Revenue Memorandum Order No. 15-1995 (Annex 'A' paragraphs D1 and E27), thus, the ten (10) year prescriptive period to assess under Section 222 of the Tax Code shall apply. Further, in the petitioner's protest dated February 10, 2012 to the PAN, there was an admission on the part of the petitioner that the Audited Financial Statement and the Income Tax Return for Fort 1 Global City Center Inc. are erroneous. Based on the foregoing, the ten (10) year prescriptive period to assess under Paragraph (a) of Section 222 of the Code shall apply which states that:

4. The contention of the petitioner that the right of the BIR to collect has already prescribed is likewise misplaced. Considering that the prescriptive period for the assessment is within 10 years, the BIR has 5 years from the time of assessment to collect pursuant to Paragraph (c) of Section 222 of the Tax Code. Specifically, it states:

xxx xxx xxx

5. The position of the petitioner that BIR Ruling No. DA (C-129) 375-2009 is valid and was never revoked by the BIR is unmeritorious. Revenue Memorandum Circular 37-07 dated May 26, 2007 provides that all rulings of first impressions shall be signed by the Commissioner of Internal Revenue (CIR). The subject ruling was signed by James H. Roldan, the Assistant Commissioner for Legal Service then of the BIR despite the fact that it is a BIR ruling of first impression. As it is, there is no CIR-signed precedent ruling which deals on 'build your own' scheme adapted by the petitioner.

6. In addition, RMC 37-02 states that the CIR may, motu propio, reverse, modify or alter any such ruling issued by the Assistant Commissioner for Legal Service at any time after its issuance if he determines the same to be not in accordance with the established precedent rulings or pertinent tax laws and revenue issuances, but after due notice to the concerned taxpayer, and in accordance with Section 246 of the Tax Code, without prejudice, however, to administrative sanctions relative such actions.

7. Revenue Memorandum Circulars Nos. 20-2010 and 55-2010 have been issued nullifying the BIR rulings exempting the transfer of condominium units to the unit owners under the so-called codevelopment/built-to-own/build your own and similar schemes of involved taxpayer. Pursuant to the said memorandum circulars, revenue officers concerned are enjoined to report similar schemes for appropriate investigation. The case of the petitioner is very similar to the cases subject of the mentioned memorandum circulars.

8. Moreover, the CIR may reverse the ruling issued to the petitioner since the latter's scheme is not in accordance with existing laws. Specifically, as explained in RMC 55-1-, the House and Land Use Regulatory Board (HLURB) rejects the scheme adapted by the petitioner for being contrary to the policy behind Presidential Decree (PD. No. 957, otherwise known as 'The Subdivision and Condominium Buyer's Protective Decree' (as amended by PD. 1216).

9. Further, Section 246 of the Tax Code provides for retroactive application of rulings or circulars promulgated by the CIR, even if prejudicial to the taxpayer, where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based. It is worth mentioning that the BIR Ruling No. DA (C-129) 375-2009 was issued with a very specific collatilla, to wit:

> 'This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.'

/ L

This exception applies to the ruling issued to the petitioner. The nullification is based on the findings that the scheme of build-your-own mainly consist of the developer making it appear that it merely manages the construction of the condominium project, and that the funds as contributed by the individual investors are pooled in a bank with the developer, as project manager, receiving a project management fee only. The foregoing effectively resulted in the non-payment of income taxes and VAT by the developer on the gross project amount.

Jurisprudence also provides that the non-retroactivity principle does not apply when the ruling involved is null and void for being contrary to law. Well-entrenched are the principles that the Government is never estopped from collecting taxes because of mistakes and errors of its revenue officers concerned are enjoined to report similar schemes for appropriate investigation. The case of the petitioner is very similar to the cases subject of the mentioned memorandum circulars.

10. The contention of Petitioner that the deficiency assessment on Income Tax, VAT, Expanded Withholding Tax and Documentary Stamp Tax is unfounded. Considering that BIR Ruling No. DA (C-129) 375-2009 has been effectively nullified and that the scheme 'build your own' is not in accordance with existing laws, petitioner cannot claim that its transaction is a non-taxable one. The deficiency income tax was assessed based on the 'Best Evidence Obtainable' because of failure and refusal of the petitioner to make certain records available per issued Subpoena Duces Tecum dated October 28, 2010. As to the deficiency VAT, petitioner failed to support with sufficient evidence its input taxes claimed per VAT returns, in violation of Section 107(A), Section 110 (A), Section 113 and Section 237 of the Tax Code. With regard to the Expanded Withholding Tax (EWT) assessment, a deficiency EWT has been found since the petitioner failed to subject to EWT income payments previously deducted from gross income. Petitioner likewise failed to file the Withholding Tax Remittance Return and pay the corresponding basic withholding tax on the transfer of the real properties. Lastly, the petitioner failed to pay

Documentary Stamp Tax which is in violation of Section 200 (B) of the Tax Code.

11. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109);

12. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another-Non videtur quisquam id capere quod ei necesse est alii restitutere."

On May 11, 2017, CTA Case No. 9503 was consolidated with CTA Case No. 9490, in conformity with the Resolution dated February 22, 2017 issued by the Third Division of this Court, which granted the consolidation of the abovementioned cases.[17]

The consolidated cases were then set for Pre-Trial Conference on July 13, 2017[18], but were later reset to September 28, 2017.[19] Accordingly, the Consolidated Pre-Trial Brief (for the Respondent) was filed on September 4, 2017[20], while petitioner's Pre-trial Brief was filed on September 6, 2017.[21]

Thereafter, the parties filed with this Court their Joint Stipulations on October 25, 2017[22] which was approved in a Resolution dated November 17, 2017[23]. A Pre-Trial Order was then issued by this Court on January 22, 2018, terminating the Pre-Trial.[24]

---

[17] CTA Case No. 9490, Docket, pp. 83-85.
[18] CTA Case No. 9490, Docket, p. 86.
[19] Minutes of the hearing held on September 7, 2017, CTA Case No. 9490, Docket, p. 133-134.
[20] CTA Case No. 9490, Docket, pp. 93-98.
[21] CTA Case No. 9490, Docket, pp. 117-126.
[22] CTA Case No. 9490, Docket, pp. 249-252.
[23] CTA Case No. 9490, Docket, p. 254.
[24] CTA Case No. 9490, Docket, pp. 265-275.

L

During trial, petitioner presented the testimony of Florencio Y. Rojas, Jr.[25], petitioner's tax consultant, and Philip Cea[26], petitioner's independent consultant on legal and business matters.

After the completion of the presentation and formal offer of evidence for the petitioner, this Court admitted as evidence for petitioner Exhibits "P-1" to "P-11" pursuant to this Court's Resolution dated June 19, 2018.[27]

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	**Description:**
P-1	Petitioner's Letter dated July 1, 2009
P-2	BIR Ruling No. DA (129) 375-2009
P-3	Preliminary Assessment Notice dated January 24, 2012
P-3-a	Protest letter in the form of a Request for Reconsideration and/or Reinvestigation dated Feb. 10, 2012
P-4	Formal Assessment Notice dated July 20, 2012 for Taxable Year 2009
P-4-a	Protest letter in the form of a Request for Reconsideration and/or Reinvestigatioin dated July 31, 2012
P-5	Preliminary Assessment Notice dated February 3, 2016 for Taxable Year 2012
P-6	Formal Assessment Notice dated March 15, 2016 for Taxable Year 2012
P-6-a	Protest letter in the form of a Request for Reconsideration and/or Reinvestigation dated March 31, 2016
P-7	Memorandum of Agreement dated November 8, 2007
P-8	2016 General Information Sheet of Fort 1 Global City Center, Inc.
P-9	Order dated July 12, 2016 issued by the Regional Trial Court Branch 266 Taguig City
P-10	Amended Judicial Affidavit of Florencio Roxas
P-10-1	Signature of Mr. Florencio Rojas, Jr. on page 12 of his Amended Judicial Affidavit
P-11	Amended Judicial Affidavit of Philip Cea

[25] Judicial Affidavit (Direct Testimony of Mr. Florencio Y. Rojas, Jr.), CTA Case No. 9490, Docket, pp. 135-148; Minutes of the hearing held on January 25, 2018, CTA Case No. 9490, Docket, pp. 276-277.

[26] Amended Judicial Affidavit (Direct Testimony of Mr. Philip Cea), CTA Case No. 9490 Docket, pp. 281-291; Minutes of the hearing held on February 20, 2018, CTA Case No. 9490 Docket, pp. 378-379.

[27] CTA Case No. 9490 Docket, pp. 491-493.

h

P-11-1	Signature of Mr. Philip Cea on page 11 of his Amended Judicial Affidavit

Respondent, for his part, presented as his witness Revenue Officers Gigette Ventura[28] and Abdulhalim Usman[29]. Also, as to respondent's documentary evidence, the Court admitted Exhibits "R-2" to "R-15", "R-19", "R-19-a", and "R-22" to "R-27", while the Court denied the admission of Exhibits "R-1", "R-1-a", "R-1-b", "R-16", "R-16-a", "R-16-b", "R-17", "R-18", "R-20", and "R-21", for failure to present the originals for comparison.[30]

The following are respondent's admitted documentary exhibits:

Exhibit:	**Description:**
R-2	Letter dated September 15, 2010
R-2-a	Signature of Revenue District Officer Gerry O. Dumayas
R-3	Subpoena duces Tecum issued on October 28, 2010
R-4	Memorandum dated February 1, 2011
R-4-a	Signature of Gigette T. Ventura
R-5	2nd Indorsement dated March 4, 2011
R-5-a	Signature of Atty. Oscar A. Aguilar, Chief, Legal Division of Revenue Region No. 8 in Makati City
R-6	Invitation for an Informal Conference dated March 23, 2011
R-6-a	Signature of Maridur V. Rosario, Revenue District Officer of Revenue District Office No. 44 in Taguig/Pateros
R-7	Memorandum dated April 27, 2011
R-7-a	Signature of Gigette T. Ventura
R-8	Proof of receipt of the Preliminary Assessment Notice with the corresponding Details of Discrepancies issued on January 24, 2012
R-9	Memorandum of Assignment issued on April 24, 2012 issued by Revenue District Officer Maridur V. Rosario
R-9-a	Signature of Maridur V. Rosario, the Revenue District Officer of Revenue District Office No. 44 in Taguig/Pateros
R-10	Letter dated May 9, 2012

[28] Judicial Affidavit (Direct Examination of Revenue Officer Gigette T. Ventura), CTA Case No. 9490, Docket, pp. 99-107; Order dated June 19, 2018, CTA Case No. 9490, Docket, p. 494-495.
[29] Judicial Affidavit (Direct Examination of Revenue Officer Abdulhalim Usman), CTA Case No. 9490, Docket, pp. 110-116; Order dated July 17, 2018, CTA Case No. 9490, Docket, pp. 504-505.
[30] Resolution dated October 10, 2018, CTA Case No. 9490, Docket, pp. 537-538.

L

R-10-a	Signature of Maridur V. Rosario, the Revenue District Officer of Revenue District Office No. 44 in Taguig/Pateros
R-11	Memorandum dated June 19, 2012
R-11-a	Signature Gigette T. Ventura
R-12	Assessment Notices dated July 20, 2012 together with the Formal Assessment Notice also dated July 20, 2012 with its corresponding Details of Discrepancies
R-12-a	Signature of Nestor S. Valeroso, the Regional Director of Revenue Region No. 8 in Makati City
R-15	Proof of receipt of the Assessment Notices dated July 20, 2012 together with the Formal Assessment Notice also dated July 20, 2012 with its corresponding Details of Discrepancies
R-14	Final Decision on Disputed Assessment issued to Fort 1 Global City Center, Inc.
R-15	Proof of receipt of the Final Decision on Disputed Assessment issued to Fort 1 Global City Center, Inc.
R-16	Electronic Letter of Authority No. SN:Ela201100053671 dated October 24, 2013 issued by Regional Director Nestor S. Valeroso
R-16-a	Signature of Nestor S. Valeroso, the Regional Director of Revenue Region No. 8 in Makati City
R-16-b	Proof of receipt of the Electronic Letter of Authority No. SN:eLA201100053671 dated October 24, 2013
R-17	Letter dated September 15, 2010
R-18	First Request for Presentation of Records dated November 8, 2013
R-19	2nd & Final Notice for Presentation of Records dated February 20, 2014
R-19-a	Signature of Rodolfo G. Mendoza, OIC-Revenue District Officer at Revenue District Office No. 44 in Taguig/Pateros
R-20	Subpoena Duces Tecum issued in January 21, 2015
R-21	Criminal complain for violation of Section 266, 253 and 256 of the National Internal Revenue Code, filed against the responsible officers of Fort 1 Global City Center, Inc.
R-22	2nd Endorsement issued by Atty. Oscar A. Aguilar recommending the assessment based on Best Evidence Obtainable
R-22-a	Signature of Atty. Oscar A. Aguilar, Chief Legal Division of Revenue Region No. 8 in Makati City
R-23	Memorandum dated October 26, 2015
R-23-a	Signature of Revenue Officer Abdulhalim P. Usman
R-24	Preliminary Assessment Notice with the

h

	corresponding Details of Discrepancies issued on February 3, 2016
R-25	Proof of receipt of the Preliminary Assessment Notice with the corresponding Details of Discrepancies issued on February 3, 2016
R-26	Assessment Notice dated March 15, 2016 together with the Formal Assessment Notice also dated March 15, 2016 with its corresponding Details of Discrepancies
R-27	Proof of receipt of the Assessment Notice dated March 15, 2016 together with the Formal Assessment Notice also dated March 15, 2016 with its corresponding Details of Discrepancies

Thus, on November 28, 2018, petitioner submitted its Memorandum[31], while respondent failed to file his memorandum.[32] Accordingly, the consolidated cases were submitted for decision on December 17, 2018.[33]

ISSUES

The parties submitted the following issues[34] for this Court's disposition:

"1. Whether or not petitioner Fort 1 Global City Center is liable for deficiency Income Tax and Value Added Tax in the amounts of ₱95,216,801.41 and ₱38,882,577.33 and the resulting compromise penalty/surcharges thereon for taxable year 2012;

2. Whether or not petitioner Fort 1 Global City Center is liable for deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, Withholding Tax and Documentary Stam Tax in the amounts of ₱691,379,263.88, ₱637,236,976.22, ₱66,006,122.14, ₱171,376,449.58 and ₱32,861,851.63 for taxable year 2009;

3. Whether BIR Ruling No. DA (C-129) 375-2009 had been validly revoked by the BIR; and

---

[31] CTA Case No. 9490 Docket, pp. 504-531.
[32] Records Verification dated December 3, 2018, CTA Case No. 9490 Docket, p. 533.
[33] Resolution dated December 17, 2018, CTA Case No. 9490 Docket, p. 534.
[34] Par. II. B., Issues, PTO, CTA Case No. 9490 Docket, p. 267.

L

4. Whether the period to assess and/or collect taxes against petitioner for the years 2009 and 2012 have already prescribed.

Petitioner claims that the Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) for taxable years 2009 and 2012 are invalid assessments.

Petitioner avers that the Letter of Authority (LOA) and assessments were not served unto and received by petitioner.

According to petitioner, during trial of these consolidated cases, it was established through the testimony of respondent's witnesses, Revenue Officer (RO) Gigette T. Ventura, and RO Abdulhalim P. Usman, that all notices, including the LOA, PAN and FAN, were served to the address 30th Street Bonifacio Global City, Taguig City.

However, it would allegedly be impossible for petitioner to receive the said notices in the said address because petitioner Fort 1's principal office address is at Unit 2C-B, FPS Building, 1st Avenue corner 30th Street, Global City, Taguig City as indicated in its General Information Sheet (GIS) for 2016 submitted to the Securities and Exchange Commission.

Petitioner further claims that the witness for respondent, RO Gigette T. Ventura, testified during the hearing held on June 19, 2018 that all the notices were served at the Fort 1 Hotel building instead of the actual office address of petitioner located at the Fort Palm Spring Condominium.

Also, Ms. Ventura was allegedly not sure that the person who received the assessment notice was even affiliated with the petitioner.

Petitioner likewise avers that upon perusal of the employment records, it had never employed any one with the name Loron Erin.

L

As to Mr. Usman's testimony, petitioner claims that the witness could not identify the position or affiliation to the company of the person with whom the letters and assessments were served upon.

Petitioner alleges that if the LOA and the Assessments were received by any person in another address not specifically stated in petitioner's GIS or any of petitioner's actual address, such person is an uninterested third party who is not authorized to receive important documents for and in behalf of herein petitioner.

Consequently, the PAN and FAN issued by the BIR for the years 2009 and 2012 are allegedly invalid for two reasons: first, the LOA is without force and effect for the simple reason that it was never received by petitioner; and second, the PAN and FAN were never received by petitioner as they were also addressed to an incomplete and/or incorrect address.

Petitioner was allegedly deprived of its constitutional right to due process and herein respondent issued the PAN and FAN in violation of Section 228 of the NIRC and Section 3 of Revenue Regulations (RR) No. 12-99. Thus, the LOA and Assessments for the taxable years 2009 and 2012 are invalid and without any force and effect.

To establish that respondent regularly performed its official duty of serving the notices to petitioner, respondent's witness, RO Gigette T. Ventura, the one who conducted the investigation of petitioner's taxes for taxable year 2009, testified that the LOA, PAN, FAN and FDDA were properly served to petitioner's authorized representative[35]. The said testimony was also supported by other evidence such as the "stamp received" in the PAN dated January 24, 2012 showing that the same was received by Grizel Patanao on January 26, 2012[36], in the FAN dated July 20, 2012, showing that the same was received by Lauron Airen, Lobby Reception, on July 31, 2012, and in the FDDA dated October 13, 2016, showing that the same was received by Arnel Santos on November 9, 2016.

Petitioner, on the other hand, claims that it did not receive the LOA, PAN, FAN and FDDA because the same were all served at the

---

[35] Judicial Affidavit (Direct Examination of Revenue Officer Gigette T. Ventura), CTA Case No. 9490 Docket, pp. 100-105.

[36] Exhibit "R-8"

L

Fort 1 Hotel building instead of the actual office address of petitioner at Unit 2C-B FPS Building, 1st Avenue corner 30th Street, Global City, Taguig as allegedly indiacted in its General Information Sheet (GIS) for the year 2016[37], and that it had never employed anyone with the name Loron Erin.

In the same vein, with regard to the LOA, PAN and FAN for taxable year 2012, respondent's witness, RO Abdulhalim Usman, the one who conducted the investigation of petitioner's tax liability for taxable year 2012, testified that the said notices were properly served to petitioner's authorized representative.[38] The testimony of RO Usman was further supported by respondent's evidence such as the "stamp received" in the copy of respondent's PAN for taxable year 2012 showing that a person named Arnel Santos, Admin. Staff, received the PAN on February 18, 2016[39], and the "stamp received" in respondent's copy of the FAN for taxable year 2012, showing receipt by Arnel Santos of the same on March 17, 2016.

Petitioner denied the receipt of the said notices, alleging that the address indicated therein is 32nd Street of Bonifacio Global City, Taguig City, and not the address indicated in its 2016 GIS. Petitioner further claims that they do not have an employee named Arnel Santos.

On the other hand, respondent counter argues that petitioner was afforded due process because it was able to reply and/or file its protest to the notices that were issued or sent to it. Respondent adds that assuming, without necessarily admitting, that the notices were sent to the improper address, petitioner was allegedly able to receive them because it responded and duly protested the assessment.

After a thorough review of the allegations of the parties, the evidence presented, and the records of these consolidated cases, the Court finds merit in the instant Petitions for Review.

---

[37] Exhibit "P-8".
[38] Judicial Affidavit (Direct Examination of Revenue Officer Abdulhalim Usman), CTA 9490 Docket, pp. 111-114.
[39] Exhibit "R-25".

In resolving the above issue, the Court finds relevant Section 228 of the NIRC of 1997, as amended, the pertinent portion of which reads:

> "SEC. 228. **Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, **he shall first notify the taxpayer of his findings**: x x x
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. x x x." (Emphasis supplied)

Relative thereto, the "implementing rules and regulations" referred to in the foregoing provision is embodied in RR No. 12-99 which lays down, under Section 3 thereof, the due process requirement in the issuance of a deficiency tax assessment, 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

L

basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof.) If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling 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. 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**." (Emphases supplied)

Based on the foregoing, there are only two (2) modes by which the FLD and FAN may be sent to the taxpayer, to wit: (1) through registered mail, or (2) by personal service.

Respondent alleges that the relevant notices were sent by personal service.

In case of personal service, the above provision specifically required that the taxpayer or his duly authorized representative shall acknowledge receipt of the said FLD and FAN in the duplicate copy thereof, 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) the date of receipt thereof.**

Furthermore, Section 3.1.6 of RR No. 18-2013[40] provides:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
> (i) The notice shall be served through personal service by delivering personally a copy thereof **to the party at his registered or known address or wherever he may be found**. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence." (Emphasis supplied)

It must be emphasized that **personal service** requires more stringent rules than service through registered mail. Moreover, RR No. 12-99 requires that service by personal delivery should be made upon the taxpayer himself or his authorized representative who shall acknowledge receipt by signing his name, stating his designation and his authority to receive the same.[41]

Also, as held by the Supreme Court, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the Commissioner of Internal Revenue to strictly comply with the requirements laid down by law and**

[40] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.
[41] *Commissioner of Internal Revenue vs. Ithiel Corporation*, CTA EB Case No. 1551, April 12, 2018.

L

its own rules is a denial of the taxpayer's right to due process.[42]

In these consolidated cases, the addresses indicated in the BIR notices (such as the LOA, PAN, FAN and FDDA) for taxable period 2009 and 2012 are different, as the notices for taxable period 2009 appear to have been sent to the address **30th St., Bonifacio Global City, Taguig City**, while the notices for taxable period 2012 were allegedly sent to **32nd Street of Bonifacio Global City, Taguig City**. These addresses are different from the principal office address indicated in petitioner's GIS for 2016 showing its principal office address is **Unit 2C-B, FPS Building, 1st Avenue corner 30th Street, Global City, Taguig City**.

While the address in petitioner's 2016 GIS may not be considered as the address registered in the BIR, respondent, however, failed to show evidence to prove that indeed the abovementioned addresses indicated in the notices are the registered address or known address of petitioner.

Also, a scrutiny of the evidence presented by respondent would show that respondent did not comply with Section 3.1.4 of RR No. 12-99, concerning personal service of the PAN, FAN and FDDA for taxable year 2009, as well as the PAN and FAN for taxable year 2012.

While it is true that the PAN dated January 24, 2012 shows that the same was received by a person named Grizel Patanao on January 26, 2012[43], the FAN dated July 20, 2012 reflects that the same was received by Lauron Airen, Lobby Reception, on July 31, 2012, and the FDDA dated October 13, 2016 indicates that the same was received by Arnel Santos on November 9, 2016, however, no statement regarding their designation and authority to act for and in behalf of petitioner were mentioned.

Furthermore, while respondent's witnesses testified by way of Judicial Affidavit that these notices were duly served to petitioner, their testimonies during cross examination reveal that they were not able to verify whether the individuals receiving the notices were

---

[42] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[43] Exhibit "R-8"

L

authorized persons or employees of petitioner. The pertinent portions of the testimony of the witnesses are hereunder quoted:

Testimony of RO Ventura during cross-examination

"ATTY. MARTINEZ:

Q. Ms. Witness, would you verify that the Letters of Authority for taxable year 2009, Subpoena Duces Tecum, Preliminary Assessment Notice, Formal Assessment Notice and Final Decision on Disputed Assessment for taxable year 2009 all contained the address or were sent to the address 30th St., Bonifacio Global City, Taguig City.

MS. VENTURA:

A. Yes, Sir.

ATTY. MARTINEZ:

Q. There is no specific building specified in that address?

MS. VENTURA:

A. No specific address. That's the one registered in the BIR.

ATTY. MARTINEZ:

Q. Ms. Witness, can you tell us who received the Preliminary Notice of Assessment?

MS. VENTURA:

A. May I be allowed to go over the documents?

Per BIR records the Preliminary Assessment Notice was received by a certain Michelle Patano on January 26, 2012.

Q. How was this served?

MS. VENTURA:

A. Personal service.

L

ATTY. MARTINEZ

Q. But you were not the one who made the service?

JUSTICE GRULLA:

Do not look at your counsel.

Madam Witness, answer based on your personal knowledge. Do not look at your counsel.

MS. VENTURA:

A. I cannot recall if I was the one who personally served it.

ATTY. MARTINEZ:

Q. Based on your recollection, Ms. Witness, is there service return issued for the service of this Preliminary Notice of Assessment?

xxx xxx xxx

MS. VENTURA:

A. Based on records, the Preliminary Assessment Notice was, there's a receipt indicated and it was personally, it was signed by the recipient, your Honors.

ATTY. MARTINEZ:

Q. **Do you know what is the position of the person who received the Preliminary Notice of Assessment**?

MS. VENTURA:

A. No, your Honors.

ATTY. MARTINEZ:

Q. For the Formal Notice of Assessment, Ms. Witness, for the year 2009, who received the specific document?

L

MS. VENTURA:

A. May I go over the Affidavit, your Honors?

JUSTICE GRULLA:

Yes.

You are supposed to testify, Madam Witness, not your counsel, you're looking at the records though.

MS. VENTURA:

A. It was received by a certain Loron Erin at the lobby reception on July 31, 2012.

ATTY. MARTINEZ:

Q. At what building?

MS. VENTURA

A. At Fort 1 Hotel.

ATTY. MARTINEZ:

Q. And, did you get the position of this person who received the document?

MS. VENTURA:

A: It was specified here he was a receptionist.

ATTY. MARTINEZ:

Q. **He was a receptionist at the hotel or is he a receptionist of the petitioner?**

MS. VENTURA:

A. **I cannot recall, your Honors, if I was the one who served this document, that's why I cannot recall if he is at the reception of the hotel or the petitioner.**

L

ATTY. MARTINEZ:

Q. So, you're not sure, Ms. Witness, if the person is even affiliated with the petitioner?"[44]

Testimony of RO Usman during cross-examination:

"ATTY. MARTINEZ:

Q. Mr. Witness, can you check the Preliminary Assessment Notice and Formal Assessment Notice, Letters of Authority and confirm before us that the address specified in those letters and assessments is only 32nd St. Corner Boni Blvd. Global City Taguig City?

MR. USMAN:

A. Yes, Sir.

ATTY. MARTINEZ:

Q. So, no specific unit number or building was mentioned in the address?

MR. USMAN

A. None.

ATTY. MARTINEZ:

A. So, how were the Notice of Assessments served to the petitioner?

MR. USMAN

A. In the stated address as far as I remember, I am the one who served this notice and I talked to the guard and I told him that I need to talk, I need to serve the Letter of Authority or the Notices and he told me that I am the one who will go upstairs in order to receive the notices.

---

[44] Transcript of Stenographic Notes (TSN) dated June 19, 2018, pp. 10-14.

L

ATTY. MARTINEZ:

Q. **So, you never met any officer of the petitioner?**

MR. USMAN:

A. **But before I give it to him Sir, I always told to the guard that could you please give it to the authorized person since we are not allowed to go upstairs.**

ATTY. MARTINEZ:

Q. Could you identify from the received Notice of Assessments that you have the name and position of the person who received the letter?

MR. USMAN:

A. **I cannot recall anymore because it is five (5) years ago. But in this Letter of Authority, it was received by Ramirez James.**

ATTY. MARTINEZ:

Q. Was the position of the said Ramirez James mentioned in that *(paused)*

MR. USMAN:

A. **It was not mentioned Sir but I always told to the guard that could you please see to it that you will give it to the authorized person because we are not allowed to go upstairs to talk to that.**

ATTY. MARTINEZ:

Q. So basically, the guard told you that the authorized person is James Ramirez?

L

MR. USMAN:

A. Exactly. In fact, the first Letter of Authority when I go there, I waited for more or less one (1) hour, more than one (1) hour.

ATTY. MARTINEZ:

Q. **And who received the Preliminary Assessment Notice**?

MR. USMAN:

A. Can I look at the records?

ATTY. MARTINEZ:

Q. Yes.

MR. USMAN:

A. It was Arnel Santos Sir.

ATTY. MARTINEZ:

Q. **And Mr. Arnel Santos, did Mr. Arnel Santos identify his signature, his position in the Fort 1 Global City Center, Inc.?**

MR. USMAN:

A. No, Sir.

ATTY. MARTINEZ:

Q. How about the Final Assessment Notice, who received that?

MR. USMAN:

A. Arnel Santos also Sir.

h

ATTY. MARTINEZ:

Q: Mr. Witness, **in all these notices and assessment you served to the Fort 1 Global City Center, Inc., did you ask for an identification of these people who received them to be sure that they are indeed affiliated with the said corporation?**

MR. USMAN:

A. **I always told to the guard Sir, in fact, his angry to me because I always keep on repeating my instructions. But I always assure him that I hope you give it to the authorized person.**

ATTY. MARTINEZ:

Q. So, you relied on the information given by the guard?

MR. USMAN:

A. Exactly Sir, because we have other *(interrupted)*"[45]

Respondent's witnesses themselves clearly admitted that they have not confirmed or even inquired into the authority of the persons who allegedly received the notices.

Also, as to the BIR notices for taxable year 2012, RO Usman mentioned that he merely handed the notices to the security guard, which is not considered a proper service of notice to the taxpayer or his authorized representative. Notably, in one case, the CTA sitting *EnBanc* held that the BIR failed to satisfactorily prove that it observed the taxpayer's right to due process when it personally served the notice to a security guard to wit:

> "The receipt by the security guard of the notices and the FDDA issued by the BIR shows the repeated mistake or negligence of petitioner in delivering the BIR documents to the same wrong person."

---

[45] TSN taken on July 17, 2018, pp. 8-12.

h

Petitioner presented evidence during trial that it was the same security guard who received the other notices issued by the BIR. Thus, petitioner wants to show this Court that there exists a pattern where respondent's security guard repeatedly received the notices and consequently, the FDDA, showing that he was armed with authority or he had semblance of authority to receive the said documents.

However, while it is on record that the same security guard received the various documents sent by respondent, the same factual premises created an impression contrary to what was sought to be proven by petitioner. In other words, the repeated receipt of the various documents by respondent's security guard does not prove that he had authority or semblance of authority to receive the same. Rather, it reflects the repeated mistake or negligence of petitioner's representative in sending the BIR documents to the same wrong person.

True, the same security guard may have received the subject notices and the FDDA. It may also be true that petitioner's representative was not permitted to enter respondent's premises. However, this cannot lead to a conclusion that said security guard already had the authority to receive the said documents. Considering the important nature of the subject BIR documents, it is incumbent upon petitioner's representative to at least verify the authority of the person who received these documents. Considerably, this is an essential part of the due process rights of respondent to be properly informed of the assessment.

Without proof of due receipt, i.e., receipt by a person duly authorized to receive the BIR documents, the Court En Banc is constrained to conclude that petitioner failed to satisfactorily prove that it observed respondent's right to due process when it served the FDDA through personal service. Consequently, based on the above legal maxim, **it is not incumbent upon respondent to prove that its security guard had no authority to receive the**

L

FDDA and other BIR documents." [46] (*Emphasis supplied.*)

At this juncture, the observations of the Court can be summarized as follows:

1. The address in the BIR notices for taxable year 2009, which RO Ventura claims to be the registered address of petitioner, is different form the address indicated in the notices for taxable year 2012, though both notices came from the BIR;

2. RO Ventura later on stated during cross examination that she's not sure if she was the one who served the notices;

3. The "stamp received" in respondent's copy of the BIR notices for taxable years 2009 and 2012 does not reflect the designation and/or authority of the one receiving the notices, to act for and in behalf of the taxpayer;

4. Respondent failed to produce the originals of the LOAs for the investigation of petitioner's tax liabilities for taxable years 2009 and 2012;

5. The testimony of ROs Ventura and Usman shows that they failed to verify the authority of the one receiving the BIR notices; and

6. The testimony of RO Usman clearly shows that he was not able to serve the notices to the taxpayer or his authorized representative, or its responsible officers, as he merely handed the notices to the security guard.

The substantial irregularities noted by the Court in the alleged personal service of the BIR notices for taxable years 2009 and 2012 show that respondent failed to strictly comply with the requirements of the law, regulations and jurisprudence previously cited. Thus, petitioner's right to due process has been violated.

---

[46] *Commissioner of Internal Revenue vs. Ithiel Corp.,* C.T.A. EB Case No. 1551. April 12, 2018.

L

In the instant consolidated cases, it appears that the BIR notices were received by individuals other than its authorized representative. Respondent also failed to present any evidence to show that they served said notices to petitioner's authorized representative. Thus, the Court finds that these notices, including the PAN and the FAN for taxable years 2009 and 2012, were received by persons who are unauthorized to do so, thus, **their receipt of these notices cannot be deemed as receipt by petitioner**.

The fact that petitioner was able to protest the FAN is of no moment as the same does not cure respondent's violation of petitioner's right to due process. Thus, petitioner's filing of a protest to the PAN and FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."[47]

The conclusion can be made that no valid assessment was issued by respondent as petitioner did not receive the same. Thus, the assessments and the FDDA issued against petitioner for taxable years 2009 and 2012 are clearly void for being violative of petitioner's right to due process. "An invalid assessment bears no valid fruit."[48] Consequently, the said assessments and the FDDA should be cancelled.

In view of the foregoing, the Court shall no longer discuss the remaining issues stipulated by the parties.

WHEREFORE, premises considered, the instant Petitions for Review are **GRANTED**. The PAN and FAN for taxable years 2009 and 2012, are **CANCELLED**. Accordingly, the deficiency tax assessments against petitioner amounting to ₱134,099,378.74 and ₱1,598,860,663.45, for taxable years 2012 and 2009 mentioned in the said assessment notices, as well as the FDDA dated October 13, 2016, are likewise cancelled and set aside.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

---

[47] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007.
[48] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, supra. Note 42.

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, 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 cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice