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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***SPECIAL SECOND DIVISION***

**TOP DRAW ANIMATION, INC.,**
*Petitioner,*

-*versus*-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA Case No. 8863**

Members:

**CASTAÑEDA, JR.**, *Chairperson*
*and*
**MANAHAN**, *JJ.*

Promulgated:

OCT 04 2018
1:05 p.m.

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**D E C I S I O N**

**MANAHAN, *J.*:**

This involves the *Petition for Review*[1] filed on August 11, 2014 by petitioner Top Draw Animation, Inc. (TDAI) pursuant to Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2] seeking the cancellation and the declaration of nullity of the deficiency tax assessment, Preliminary Collection Letter (PCL), and Final Notice Before Seizure (FNBS) issued by respondent Commissioner of Internal Revenue (CIR) for taxable year 2009.

**THE PARTIES**

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address

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[1] Docket, Vol. I, CTA Case No. 8863, pp. 14-27.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

at 6/F West Tower, PSE Center, Exchange Road, Ortigas Center, Pasig City.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) as well as related statutes and their implementing rules and regulations, including inter alia, the power to issue deficiency tax assessment, evaluate and decide upon merits disputed assessment pursuant to law, with office address at the Bureau of Internal Revenue (BIR) National Revenue Office Building, Diliman, Quezon City.[4]

**THE FACTS**

Petitioner is primarily engaged in the business of exporting animated film cartoons and registered with the BIR under Certificate of Registration bearing Taxpayer Identification No. 204-140-471-000 and OCN 3RC0000498781.[5]

Petitioner filed and paid its quarterly income tax for the first, second, and third quarter of 2009 on May 27, 2009, August 27, 2009, and November 26, 2009, respectively.[6]

On April 23, 2010, petitioner filed and paid its Annual Income Tax Return for taxable year 2009.[7]

On September 15, 2010, respondent issued Letter of Authority (LOA) No. LOA-43A-2010-00000236 to authorize the concerned revenue officers to examine the book of accounts and other accounting records for all internal revenue taxes of the petitioner covering the period from January 1, 2009 to December 31, 2009.[8]

On February 11, 2013, respondent issued a Preliminary Assessment Notice (PAN) for the alleged deficiency income tax (IT) amounting to Php27,360,231.46 and deficiency

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[3] Docket, Vol. 1, Joint Stipulation of Facts and Issues (JSFI). p. 246.
[4] *Id.*
[5] *Id.*, Vol. I, Petition for Review, p. 15.
[6] *Id.*
[7] *Id.*
[8] *Id.*, Vol. II, Exhibit "R-2", p. 760.

documentary stamp tax (DST) amounting to Php6,270.85.[9] Said PAN was received by a certain Rina Manalastas.[10]

On March 8, 2013, respondent issued a Final Assessment Notice (FAN) bearing Demand No. 043A-B01-09 for deficiency IT, DST, and compromise penalty amounting to Php27,925,842.41, Php5,362.31, and Php1,000.00, respectively.[11] On April 5, 2013, respondent issued a Formal Letter of Demand (FLD).[12]

On July 10, 2014, petitioner received from respondent a PCL dated June 18, 2014, demanding payment of the alleged deficiency IT and DST while on July 11, 2014, petitioner received from respondent an FNBS demanding settlement of the alleged deficiency taxes.[13]

Hence, petitioner filed the instant petition on September 11, 2014. Respondent submitted the Answer[14] on October 7, 2014 after this Court granted[15] the former's Motion of Extension to file Answer[16]. Petitioner, on the other hand, filed its Reply on the said Answer on October 23, 2014.[17]

The pre-trial conference of the instant case was set on November 20, 2014 and the parties were ordered to file their respective pre-trial brief at least three (3) days before said pre-trial.[18]

Petitioner filed its Pre-Trial Brief on November 17, 2014 while respondent filed his counterpart pleading on February 27, 2015[19] after this Court granted the latter's Motion to Cancel and Reset Pre-Trial Conference[20] and reset the pre-trial conference on March 5, 2015[21].

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[9] *Id.,* Vol. I, Petition for Review, p. 16; Vol. II, Exhibit "R-9", p. 767.
[10] *Id.,* Vol. II, Exhibit "R-11", p.770
[11] Docket, Vol. II, Exhibits "R-12" to "R-12.2", pp. 771-773.
[12] *Id.*, Exhibit "R-13", p. 774.
[13] *Id.,* Vol. I, Petition for Review, p. 16.
[14] *Id.,* Vol. I, pp. 110-113.
[15] *Id.,* Vol. I, Order dated September 8, 2014, p. 109.
[16] *Id.,* Vol. I, pp. 106-108.
[17] *Id.,* Vol. I, pp. 114-120.
[18] *Id.,* Vol. I, Notice of Pre-Trial Conference, p. 121.
[19] *Id.,* Vol. I, p. 219-222.
[20] *Id.,* Vol. I, p. 213-215.
[21] *Id.,* Vol. I, Minute Resolution dated January 22, 2015, p. 218.

The parties were ordered to submit their Joint Stipulation of Facts & Issues (JSFI).[22] On, March 25, 2015, the parties submitted said JSFI[23]. On April 6, 2015, the pre-trial is terminated and the Court set the initial presentation of petitioner's evidence[24].

After the presentation of their own evidence, the parties were ordered to submit their respective memoranda.[25] On February 15, 2018, petitioner submitted its Memorandum[26] after this Court granted[27] its Motion for Extension of Time to File Memorandum[28]. On the other hand, respondent failed to submit his Memorandum,[29] hence, the instant case was submitted for decision[30].

## ISSUE/S

The following are the stipulated issues by the parties:[31]

1. Whether or not petitioner is liable for deficiency IT and DST for taxable year ending December 31, 2009;

2. Whether or not the assessment made by the respondent is valid.

**Petitioner's Arguments**[32]

Petitioner argues that it did not receive any FAN or FLD from respondent in violation of its right to due process. It also argues that respondent's right to assess the alleged deficiency taxes for taxable year 2009 has already prescribed and is devoid of any legal and factual bases.

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[22] Docket, Vol. I, Minute Resolution dated March 5, 2015, p. 226.
[23] *Id.*, Vol. I, pp. 246-248.
[24] *Id.*, Vol. I, Pre-Trial Order, pp. 249-254.
[25] *Id.*, Vol. II, Resolution dated December 18, 2017, pp. 865-866.
[26] *Id.*, Vol. II, pp. 877-917.
[27] *Id.*, Vol. II, Order dated February 14, 2018, p. 875.
[28] *Id.*, Vol. II, pp. 870-873.
[29] *Id.*, Vol. II, Records Verification dated February 27, 2018, p. 918.
[30] *Id.*, Vol. II, Resolution dated March 2, 2018, p. 919.
[31] *Id.*, JSFI, p. 247.
[32] *Supra.*, Note 26.

**Respondent's Counter-Arguments**[33]

Respondent argues that this Court has no jurisdiction on the instant petition since the assessment has become final, executory and demandable due to petitioner's failure to file a valid protest against the FLD and FAN.

## RULING OF THE COURT

*This Court has jurisdiction on the instant case.*

First, this Court shall determine whether this Court has jurisdiction on the instant case.

The jurisdiction of the CTA regarding internal revenue taxes is provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

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

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

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

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[33] *Supra.*, Note 14.

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

Respondent argues that since petitioner failed to file a valid protest against the FAN, the latter has become final, executory, and demandable, hence, this Court has no longer any jurisdiction over the case.

Respondent arguably is insinuating that since there was an absence of a valid protest by the petitioner, there was no disputed assessment to speak of. Thus, respondent's issuance of a PCL was valid and enforceable.

On this note, respondent should be aware that the abovementioned legal provision does not pertain only to disputed assessments or refunds of internal revenue taxes but also to other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*,[34] the Supreme Court ruled:

> "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals*,[6] the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide "other matters" related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.
>
> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

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[34] G.R. No. 169225, November 17, 2010.

> Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we 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)."

In the instant case, the issue raised by the petitioner is the invalid issuance of the FNBS by the respondent without the former receiving a FAN from the latter. Such issuance is a categorical act on the part of the respondent to collect the subject tax assessment from the petitioner who has not received any FAN. Thus, it falls squarely within the jurisdiction of this Court under Section 7(a)(1) of RA No. 1125, as amended.

The absence of a valid protest will not preclude this Court from taking cognizance of the instant petition especially when the allegation of the petitioner in assailing such argument is the failure on the part of the respondent to validly serve the required FAN which allegedly violated the right of petitioner to due process.

The law and jurisprudence provide that the subject matter on the issuance of FNBS in the absence of a valid service of a FAN falls squarely under the classification of "other matters arising under the National Internal Revenue Code". Thus, this Court has jurisdiction on the instant petition.

*The FAN must be served and actually received by the taxpayer, otherwise further notices become null and void.*

Petitioner argues that, although it received the PAN, it did not receive the required FAN, hence, respondent deprived the former of its right to protest the assessment which is a violation of its right to due process. Respondent, on the other hand, insists that the FLD and the FAN both dated March 8, 2013 were issued against the petitioner.

A scrutiny of the BIR Records marked as Exhibit "R-1" reveals that FANs dated March 8, 2013 for income tax (IT)[35], documentary stamp tax (DST)[36], and compromise penalty (CP)[37], and FLD dated March 8, 2013 for deficiency IT, DST,[38] and CP[39], were issued. However, there was no indication on the face of said documents that the same were received by any official representative of the petitioner.

Further study of the BIR Records indicates that in a Memorandum[40] for the Revenue District Officer (RDO) of Revenue District No. 43A, Pasig City, as to the service of the PAN[41], a certain Rina Manalastas had received the said memorandum and PAN on February 15, 2013 without any indication as to the latter's privity to or connection with the petitioner or her authority in receiving said memorandum and PAN.

Another Memorandum[42] for the said RDO as to the service of the FAN was also found in the said BIR Records. However, there was no indication on the face of said memorandum that any official representative of the petitioner had received the same. The above-mentioned FANs were not attached to the said memorandum unlike in the preceding paragraph wherein the receiving copy of the PAN was attached to the covering memorandum as evidenced by the similar date of receipt thereof by Ms. Manalastas.

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[35] Docket, Vol. II, Exhibit "R-12", p. 771; BIR Records, p.365.
[36] *Id.*, Vol. II, Exhibit "R-12.1", p. 772; BIR Records, p. 364.
[37] *Id.*, Vol. II, Exhibit "R-12.2", p. 773; BIR Records, p. 363.
[38] *Id.*, Vol. II, Exhibit "R-13", p. 774; BIR Records, p. 361.
[39] *Id.*, Vol. II, Exhibit "R-13.1", p. 775; BIR Records, p. 362.
[40] BIR Records, p. 356.
[41] *Id.*, p. 355.
[42] *Id.*, p. 357. *on*

Thus, in the absence of proof of receipt of the FLD/FAN, petitioner's allegation of not receiving the FAN is given credence by this Court.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "**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: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings...." (*Emphasis supplied*)

Similarly, Section 3.1.4 of Revenue Regulations (RR) No. 12-99 or the rules "Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty" provides:

> 3.1.4 Formal Letter of Demand and Assessment Notice.
>
> The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. **If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand**, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if

acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. (*Emphasis supplied*)

The above provisions require that the required assessments must be served and actually received by the taxpayer itself or its duly authorized representative as evidenced by the latter's receipt thereof in the duplicate copy of said assessment.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation et al.*,[43] the Supreme Court ruled that assessments must be served and actually received by the taxpayer, to wit:

> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer.** Accordingly, an affidavit, which was executed by revenue officers stating the tax liabilities of a taxpayer and attached to a criminal complaint for tax evasion, cannot be deemed an assessment that can be questioned before the Court of Tax Appeals. (*Emphasis supplied*)

Such requirements were also reiterated in the case of *Commissioner of Internal Revenue v. Dominador Menguito*,[44] to wit:

> "... The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. **Due process requires that it must be served on and received by the taxpayer**." (*Emphasis supplied*)

The essence of such requirement and following such procedure was explained in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[45] to wit:

> The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the

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[43] G.R. No. 128315, June 29, 1999.
[44] G.R. No. 167560, September 17, 2008.
[45] G.R. No. 215957, November 09, 2016.

> assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. **Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.** (*Emphasis supplied*)

Thus, the effect of such non-compliance with the given protest procedures is tantamount to a violation of the taxpayer's right to due process which will render respondent's further action a nullity.

In *Commissioner of Internal Revenue v. Azucena T. Reyes,*[46] the Supreme Court ruled:

> xxx petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit**. (*Emphasis supplied*)

Thus, respondent's issuance of the PCL and the FNBS was null and void as no collection can stem from an invalid tax assessment. As the case of *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[47] aptly ruled, and we quote:

> "...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..."

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the subject Preliminary Collection Letter and Final Notice Before Seizure are hereby **CANCELLED** for being **NULL AND VOID**.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

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[46] G.R. Nos. 159694 & 163581, January 27, 2006.
[47] G.R. No. 193100, December 10, 2014.

**I CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
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.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice