REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

JO ANNA LEE O. SANTOS represented by JOSEFINO R. SANTOS, *Petitioner,*	**CTA CASE NO. 8214**
-versus-	**Members:** **FABON-VICTORINO,** and **RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE represented by REVENUE DISTRICT OFFICER, REVENUE DISTRICT OFFICE NO. 25B Sta. Maria, Bulacan *Respondent.*	**Promulgated:** NOV 13 2018 3:52 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, J.:

The Case

This is a remanded case involving Respondent's assessment against Petitioner in the total amount of Php10,296,929.18, allegedly representing the latter's deficiency Income Tax, Value-Added Tax ("VAT"), Expanded Withholding Tax ("EWT") and compromise penalty for taxable year 2005, pursuant to the Decision dated October 03, 2016 of the Court of Tax Appeals ("CTA") *En Banc* in CTA EB No. 1288.

The Facts

Petitioner Jo Anna Lee O. Santos is of legal age, single, and resident of Bonga Menor, Bustos, Bulacan. She is represented by her father, Josefino R. Santos, also of legal age, married and resident of Bonga Menor, Bustos, Bulacan, by virtue of a Special Power of Attorney dated November 16, 2010.[1] She is the proprietor of Saint Paul Petron Station located at Donacion, Angat, Bulacan.[2]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City. Respondent is represented by the Revenue District Officer of Revenue District Office ("RDO") No. 25B, with office address at the 2nd Floor, Landbank Building, Bagbaguin, Sta. Maria, Bulacan.[3]

A Letter of Authority ("LOA") No. 2007-00006162[4] dated December 12, 2007 was issued to Petitioner, authorizing Revenue Officer ("RO") Anabelle Delicana and Group Supervisor ("GS") A. De Leon RDO No. 25B, Sta. Maria, Bulacan, to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 01, 2005 to December 31, 2005.

A Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[5] ("Waiver") was executed by Petitioner on September 10, 2008 and accepted by Revenue District Officer Orlando V. Chio, extending the period to assess until December 31, 2009.

On May 20, 2009, a *Subpoena Duces Tecum*[6] was issued against Petitioner, commanding her to appear before the Office of the Chief of the Legal Division of Revenue Region No. 5-Valenzuela City on June 01, 2009 and to bring with her and submit her books of accounts, accounting records, and other pertinent records.

On June 13, 2009, Petitioner wrote a letter[7] addressed to the Chief of the Legal Division of BIR Revenue Region No. 5, in relation to the *Subpoena Duces Tecum* issued against her, requesting that "the docket be returned back to Revenue District Office of Bulacan, for submission of books of accounts and other related accounting records and for continuance of investigation by Revenue Officer Annabelle Halili-Delicana."

[1] Docket, Pre-Trial Order, Facts, Par. 1, pp. 185-186.
[2] *Id.*, Pre-Trial Order, Facts, Par. 2, p. 186.
[3] *Id.*, Pre-Trial Order, Facts, Par. 3, p. 186.
[4] BIR Records, Exhibit "1", p. 12.
[5] *Id.*, Exhibit "2", p. 69.
[6] *Id.*, Exhibit "3", p. 73.
[7] Docket, Exhibit "L", p. 247.

On November 16, 2009, a Preliminary Assessment Notice[8] ("PAN") was issued against Petitioner.

Pursuant to LOA No. 2007-00006162 dated December 12, 2007, the BIR Revenue Region No. 5 issued a Final Assessment Notice[9] ("FAN") on December 04, 2009 against Petitioner for alleged deficiency internal revenue tax liabilities for taxable year 2005, computed as follows:

TAX TYPE	BASIC	SURCHARGE	INTEREST	TOTAL
Income Tax	Php5,179,005.25	Php -	Php3,926,203.88	Php 9,105,209.13
VAT	640,453.46	-	514,091.99	1,154,545.45
EWT	Php 3,000.00	Php750.00	Php 2,424.60	6,174.60
TOTAL AMOUNT DUE				**Php10,265,929.18**

Claiming that no administrative protest was made by Petitioner, Respondent issued on March 10, 2010 a Preliminary Collection Letter[10] ("PCL") demanding payment of the afore-mentioned deficiency taxes, but with the addition of compromise penalty of Php31,000.00; which brings the total amount to Php10,296,929.18.

Respondent issued a Final Notice Before Seizure[11] ("FNBS") to Petitioner on March 22, 2010, notifying the latter to make necessary settlement of her tax liabilities. Since Petitioner did not respond, Respondent issued a Warrant of Distraint and/or Levy on May 14, 2010.[12]

Respondent issued a Notice of Tax Lien[13] on October 20, 2010, informing Petitioner that a Notice of Tax Lien was served on October 06, 2010 to the Registry of Deeds of Meycauayan, Bulacan for the property covered by Transfer Certificate of Title (TCT) No. T-369883(M)[14] in the name of Petitioner and Allan Joseph O. Santos and Ann Gretchen O. Santos.[15]

On November 11, 2010, Petitioner filed a letter[16] dated November 08, 2010 with the BIR RDO No. 25B, Sta. Maria, Bulacan, relative to the Notice of

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8 BIR Records, Exhibits "4" to "4-c", pp. 154-157.
9 Docket, Exhibits "F" to "H", pp. 241-243; BIR Records, Exhibits "5-a", "5", and "5-d", respectively, pp. 164, 165 and 161.
10 Docket, Exhibit "I", p. 244; BIR Records, Exhibit "6", p. 167.
11 Docket, Exhibit "M", p. 248; BIR Records, Exhibit "7", p. 168(2).
12 Docket, Exhibit "N", p. 249.
13 *Id.*, Exhibit "O", p. 250.
14 *Id.*, Exhibit "Q", pp. 252-253.
15 BIR Records, Notice of Tax Lien dated September 23, 2010 addressed to the Registry of Deeds of Meycauayan, Bulacan, p. 174; it was stamped received by the Registry of Deeds Meycauayan, Bulacan on October 6, 2010.
16 Docket, Exhibit "P", p. 251; BIR Records, Exhibit "8", p. 177.

Tax Lien, requesting that she be given another chance regarding all of her alleged tax liabilities since her business is very weak.

Thereafter, on November 17, 2010, Petitioner filed a Motion for Reconsideration ("Protest of Assessment")[17] of Respondent's Notice of Tax Lien dated October 20, 2010, anchoring her arguments on the following: (a) prescription; (b) lack of factual basis of the assessment of deficiency taxes; (c) non-receipt of previous notices; and (d) the levied property not being solely owned by the taxpayer.

On December 09, 2010[18], Petitioner received Respondent's Letter-Decision [19] dated November 24, 2010, denying Petitioner's motion for reconsideration.

Aggrieved, Petitioner filed the instant Petition for Review with prayer for suspension of collection of the disputed tax deficiencies on January 07, 2011.

In the Resolution[20] dated February 28, 2011, this Court gave Petitioner the opportunity to be heard and present evidence for the suspension of the implementation of the Warrant of Distraint and/or Levy dated May 14, 2010.

Accordingly, on March 14, 2011, Petitioner filed a Memorandum in Support of the Prayer for Temporary Restraining Order[21]; while Respondent filed her Memorandum[22] on March 25, 2011.

Meanwhile, on March 25, 2011, Respondent filed her Answer to the Petition for Review[23], interposing special and affirmative defenses, alleging, among others, that assessments are *prima facie* presumed correct and made in good faith; that the assessments issued against Petitioner were arrived at pursuant to Revenue Memorandum Circular (RMC) No. 23-2000, which provides that in absence of accounting records or other necessary documents for the determination of taxpayer's deficiency internal revenue tax liabilities, the assessment shall be determined based on the "best evidence obtainable"; that the FAN against Petitioner was issued on December 04, 2009, and the same was received by Petitioner on January 11, 2010, hence, Petitioner should have filed her request for reinvestigation or reconsideration within thirty (30) days from

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[17] Docket, Exhibits "B" to "B-7", pp. 229-236.
[18] *Id.*, Par. 2, Petition for Review, p. 2.
[19] *Id.*, Exhibits "A" and "A-1", pp. 227-228.
[20] *Id.*, p. 58.
[21] *Id.*, pp. 63-67.
[22] *Id.*, pp. 74-78.
[23] *Id.*, pp. 79-87.

January 11, 2010, thus, Petitioner's motion for reconsideration, filed on November 17, 2010, was clearly filed out of time; that in an effort to destroy the validity of the FAN in this case, Petitioner resorted to denial of her having signed a Waiver; and that Petitioner having slept on her right to protest the assessments within the prescribed period, the subject deficiency assessments have become final and executory.

In response thereto, Petitioner filed a Reply[24] on April 11, 2011, alleging, among others, that with respect to the purported Waiver dated September 10, 2008, she denies the execution as well as her signature as she never signed and read the same; and that she did not appear before the notary public who notarized the same, hence, she did not really know the contents of the said document.

On April 12, 2011, this Court rendered a Resolution[25] granting Petitioner's motion to suspend the implementation of the Warrant of Distraint and/or Levy on the condition that Petitioner files a surety bond equivalent to 1 ½ times the amount sought to be collected.

Respondent filed a Motion for Reconsideration[26] on May 06, 2011, praying that the Resolution dated April 12, 2011 be set aside and a new one be issued denying Petitioner's motion to suspend the implementation of the Warrant of Distraint and/or Levy.

On May 24, 2011, Petitioner filed a Comment on Respondent's Motion for Reconsideration with Ex-Parte Motion to Set Case for Pre-Trial[27] moving that the case be now set for pre-trial considering that the issues have been joined since Respondent has already filed his Answer.

In the Resolution[28] dated July 20, 2011, this Court denied Respondent's Motion for Reconsideration and set the case for pre-trial on August 12, 2011.

Accordingly, Respondent's Pre-Trial Brief[29] was filed on August 05, 2011.

However, during the scheduled pre-trial, Petitioner's counsel failed to appear despite due notice and likewise failed to file a pre-trial brief. Thus, this

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[24] *Id.*, pp. 88-93.
[25] *Id.*, pp. 95-102.
[26] *Id.*, pp. 103-106.
[27] *Id.*, pp. 109-111.
[28] *Id.*, pp. 114-118.
[29] *Id.*, pp. 119-123.

Court granted Respondent's motion to dismiss the present case for failure to prosecute.[30]

Petitioner then filed her Motion for Reconsideration[31] on September 07, 2011 through registered mail and received by this Court on September 13, 2011, claiming that her counsel's failure to appear was due to the fact that counsel received the Notice of Resolution dated July 21, 2011 and the Resolution promulgated on July 20, 2011, scheduling the pre-trial on August 12, 2011, only on August 16, 2011. Petitioner further attached her Petitioner's Pre –Trial Brief[32] in the said motion.

In the Resolution[33] dated October 17, 2011, the Court granted Petitioner's Motion for Reconsideration. Accordingly, on October 25, 2011, this Court issued a Notice of Pre-Trial Conference[34] setting the case for pre-trial conference on November 25, 2011.

In compliance with the Notice of Pre-Trial Conference, the Respondent's Pre-Trial Brief[35] was filed on November 11, 2011. Meanwhile, the pre-trial was reset to January 13, 2012.[36]

Petitioner's Amended Pre-Trial Brief[37] was filed on December 01, 2011 through registered mail and received by the Court on December 07, 2011.

Thereafter, this Court issued a Pre-Trial Order[38] on February 23, 2012, declaring the pre-trial conference as terminated and ordering the continuation of Petitioner's presentation of evidence.

Upon Petitioner's request[39], the Court issued a *Subpoena Duces Tecum and Ad Testificandum* [40] to Ms. Concepcion Buenaventura on April 30, 2012 commanding her to appear before the Court on May 08, 2012. However, per Sheriff's Return, it indicated that Ms. Buenaventura is no longer connected with Buenaventura and Associates Accounting Firm.[41]

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[30] *Id.*, Minutes of the Hearing dated August 12, 2011, p. 125.
[31] *Id.*, pp. 136-138.
[32] *Id.*, pp. 129-133.
[33] *Id.*, pp. 145-148.
[34] *Id.*, pp. 149-150.
[35] *Id.*, pp. 151-155.
[36] *Id.*, Minutes of the Hearing dated November 25, 2011, p. 157.
[37] *Id.*, pp. 162-167.
[38] *Id.*, pp. 185-193.
[39] *Id.*, Minutes of the Hearing dated April 12, 2012, p. 198.
[40] *Id.*, p. 201.
[41] *Id.*, Minutes of the Hearing dated May 8, 2012, p. 203.

On June 18, 2012, Petitioner filed a Motion for Issuance of *Subpoena*[42] for Ms. Concepcion Buenaventura. This Court issued the corresponding *Subpoena Duces Tecum and Ad Testificandum*[43] on June 22, 2012. However, Ms. Buenaventura failed to appear on the scheduled hearing.[44]

During trial, Petitioner presented (1) Josefino R. Santos[45], Petitioner's father and representative; (2) Datu Rynir Biruar[46], Area Sales Executive of Petron Corporation assigned in Bulacan; (3) Marichu Ramos Cruz[47], Dealer and Distributor of Petron Dealers Association in Central Luzon; and (4) Felicito C. Ramos[48], Certified Public Accountant, connected with Buenaventura and Associates Accounting Firm, Petitioner's accountant, as her witnesses.

On August 14, 2012 Petitioner filed her Formal Offer of Evidence[49], offering Exhibits "A" to "T-2", inclusive of sub-markings; while Respondent filed his Comment/Objection (Re: Petitioner's Formal Offer of Evidence)[50] on October 05, 2012. Thereafter, the Court issued a Resolution[51] on November 09, 2012, admitting Petitioner's exhibits except for Exhibits "D", "E", "R", and "B-8".

On the other hand, Respondent presented (1) RO Anabelle Halili-Delicana[52]; (2) RO Concepcion E. Defuntorum[53]; and (3) RO Ma. Leslie C. Cruz[54], as his witnesses.

Respondent's Formal Offer of Documentary Evidence[55] was filed on July 12, 2013 offering Exhibits "1" to "11", inclusive of sub-markings. In response thereto, Petitioner filed a Comment on Respondent's Formal Offer[56] on August 14, 2013. In the Resolution[57] dated August 22, 2013, this Court admitted all of

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[42] *Id.*, pp. 208-210.
[43] *Id.*, p. 214.
[44] *Id.*, Minutes of the Hearing dated July 5, 2012, p. 215.
[45] *Id.*, Minutes of the Hearing dated February 9, 2012, p. 181; Minutes of the Hearing dated March 30, 2012, p. 194.
[46] *Id.*, Minutes of the Hearing dated April 12, 2012, p. 198.
[47] *Id.*, Minutes of the Hearing dated May 31, 2012, p. 207.
[48] *Id.*, Minutes of the Hearing dated July 24, 2012, p. 217.
[49] *Id.*, pp. 220-226.
[50] *Id.*, pp. 269-271.
[51] *Id.*, pp. 275-276.
[52] *Id.*, Minutes of the Hearing dated November 27, 2012, p. 277; Exhibit "P-9", pp. 261-264.
[53] *Id.*, Minutes of the Hearing dated January 24, 2013, pp. 298-300; Exhibit "P-10", pp. 378-382.
[54] *Id.*, Minutes of the Hearing dated July 4, 2013, p. 335; Exhibit "P-11", pp. 395-398.
[55] *Id.*, pp. 336-341.
[56] *Id.*, pp. 348-350.
[57] *Id.*, pp. 354-355.

Respondent's exhibits except for Exhibits "9", "10", and "11" for failing to comply with the requirements of the Judicial Affidavit Rule.

On September 10, 2013, Respondent filed a Motion for Reconsideration[58] to the said resolution. On the other hand, Petitioner filed her Comment on Respondent's Motion for Reconsideration[59] on October 25, 2013.

In the Resolution[60] dated November 13, 2013, this Court ordered Respondent to submit replacement judicial affidavits of RO Concepcion E. Defuntorum and RO Ma. Leslie C. Cruz and held the resolution of Respondent's Motion for Reconsideration in abeyance.

On November 28, 2013, Respondent filed his Compliance[61], attaching thereto the replacement judicial affidavits. Consequently, in the Resolution[62] dated December 17, 2013, this Court granted Respondent's Motion for Reconsideration, thereby, admitting Exhibits "9", "10", and "11".

Thereafter, the Memorandum for the Respondent[63] was filed on February 6, 2014; while the Memorandum for Petitioner[64] was filed on February 26, 2014.

With the filing of the parties' respective memoranda, the case was deemed submitted for decision in the Resolution[65] dated February 28, 2014.

On November 26, 2014, the Court rendered a Decision[66], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Letter-Decision dated November 24, 2010 rendered by the Revenue District Officer of RDO No. 25-B of Revenue Region No. 5 is **REVERSED** and the Notice of Tax Lien dated October 20, 2010 served at the Register of Deeds, Meycauayan, Bulacan for Transfer Certificate of Title No. T-369883 is hereby **CANCELLED** and **WITHDRAWN**.

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[58] *Id.*, pp. 356-362.
[59] *Id.*, pp. 366-369.
[60] *Id.*, pp. 371-374.
[61] *Id.*, pp. 375-376.
[62] *Id.*, pp. 403-404.
[63] *Id.*, pp. 407-414.
[64] *Id.*, pp. 415-428.
[65] *Id.*, p. 430.
[66] *Id.*, pp. 433-453.

SO ORDERED."

In the said decision, this Court held that Respondent's right to assess Petitioner for deficiency Income Tax, VAT, and EWT for taxable year 2005 has already prescribed considering that the subject Waiver[67] executed by Petitioner on September 10, 2008 is invalid for failing to comply with Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, *i.e.*, the subject waiver did not indicate the date of acceptance by the BIR.

Respondent filed a Motion for Reconsideration[68] on December 18, 2014; while Petitioner filed her Comment and Opposition to Respondent's Motion for Reconsideration[69] on January 13, 2015. However, the said motion was denied by this Court for lack of merit *via* Resolution[70] dated March 2, 2015.

On April 21, 2015, Respondent filed a Petition for Review with the Court of Tax Appeals *En Banc* and the case was docketed as CTA EB No. 1288. On May 12, 2015, Petitioner filed her Comment on the Petition for Review. The Memorandum for Respondent herein was filed on September 18, 2015; while Petitioner failed to file her memorandum.[71]

On October 03, 2016, the CTA *En Banc* rendered a Decision[72] granting Respondent's Petition for Review, thus, setting aside the Decision dated November 26, 2014 and the Resolution dated March 02, 2015 of this Division. The CTA *En Banc* held that although the subject Waiver was indeed defective, nevertheless, both parties were in *pari delicto* in their failure to strictly comply with the legal requirements in the execution of the subject waiver. Hence, in light of the Supreme Court decision in *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[73], the CTA *En Banc* held that the Waiver validly extended the right of the government to assess Petitioner for her deficiency tax liabilities for taxable year 2005. As a result, the case was remanded to this Court for a complete determination of Petitioner's deficiency tax liabilities for taxable year 2005.

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67 BIR Records, Exhibit "2", p. 69.
68 Docket, pp. 454-457.
69 *Id.*, pp. 460-464.
70 *Id.*, pp. 470-473.
71 *Id.*, As culled from the Decision of the Court En Banc in CTA EB No. 1288 dated October 03, 2016, p. 492.
72 *Id.*, pp. 486-502.
73 G.R. No. 212825, December 07, 2015.

An Entry of Judgment[74] was issued by the Clerk of Court of the CTA *En Banc*, stating that the Decision dated October 03, 2016 rendered in CTA EB No. 1288 has become final and executory on November 19, 2016.

In view of the foregoing, this Court issued the Resolution[75] dated November 21, 2017, directing both parties to submit a manifestation informing this Court of any supervening event which may have transpired that would affect the disposition of the case and whether there is a need to conduct further proceedings.

Considering that both parties failed to comply with the said Resolution[76], the Court issued another Resolution[77] dated January 26, 2018 reiterating the November 21, 2017 Resolution.

On February 9, 2018, Respondent filed a Manifestation with Compliance[78], stating that there happened no supervening event that would affect the disposition of this case and that would give rise to the need to conduct further proceedings. Moreover, Respondent explains that his counsel thought in good faith that since there is no supervening event that would affect the disposition of the case, then the filing of such manifestation was already dispensable. The Court noted the said Manifestation and accepted his explanation in the Resolution[79] dated March 26, 2018. In the same Resolution[80], the Court adjudged Petitioner guilty of indirect contempt and ordered Petitioner to pay a fine of Php15,000.00 for failure to file her manifestation.

Hence, the Court shall now determine whether Petitioner is liable for the assessed deficiency taxes for taxable year 2005.

<u>The Issues</u>

The issues[81] to be resolved by the Court are the following:

1. Whether legal and factual grounds exist to justify invalidation of the assessments made by Respondent against Petitioner;

[74] Docket, p. 504.
[75] *Id.*, pp. 506-507.
[76] *Id.*, pp. 508-509.
[77] *Id.*, pp. 511-512.
[78] *Id.*, pp. 513-514.
[79] *Id.*, pp. 517-519.
[80] *Id.*, pp. 515 and 517-519.
[81] *Id.*, Pre-Trial Order, Issues, Pars. 1, 2, and 4, p. 188.

2. Whether the administrative protest was seasonably filed by the Petitioner pursuant to Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended; and

3. Whether the deficiency assessments for taxable year 2005 against the Petitioner have become final, executory and demandable.

Discussion/Ruling

In her Petition for Review[82], Petitioner alleges that she cannot be faulted for her seeming silence to immediately contest the disputed assessment as she did not personally receive the notices of the assessing BIR RDO. Petitioner also avers that the accounting firm of her Petron Station failed to immediately inform her of the alleged tax deficiency and the notices sent by the BIR.

Likewise, in her Memorandum for Petitioner[83], Petitioner reiterates that she did not personally receive the notices of the assessing BIR Revenue District Office which were allegedly sent to Petitioner through registered mail.

On the other hand, Respondent contends that Petitioner failed to file an administrative protest in accordance with Section 228 of the NIRC of 1997, as amended. Respondent points out that the FAN against Petitioner was issued on December 04, 2009, and the same was received by Petitioner on January 11, 2010; hence, Petitioner should have filed her request for reinvestigation or reconsideration within thirty (30) days from January 11, 2010. Respondent argues that when Petitioner filed the Motion for Reconsideration on November 17, 2010, the motion was clearly filed out of time.

For failure of Petitioner to file an administrative protest in accordance with Section 228 of the NIRC of 1997, as amended, Respondent claims that the deficiency assessments against Petitioner became final, executory, and demandable.

In view of the parties' foregoing allegations, the Court shall determine if the notices of assessments were validly sent to Petitioner.

[82] *Id.*, Petition for Review, Par. 15, p. 11.
[83] *Id.*, Memorandum for Petitioner, Par. 14, p. 419.

However, before proceeding with such determination, the Court shall first determine if the LOA was served to Petitioner within the required 30-day period.

Pursuant to Revenue Audit Memorandum Order (RAMO) No. 1-00, an LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, it becomes null and void unless revalidated.

In this case, LOA No. 2007-00006162[84] dated December 12, 2007 was received by a certain Francisca S. de Leon on January 2, 2008.

During the cross-examination of Respondent's witness, RO Annabelle Halili-Delicana, she testified that Ms. Francisca S. de Leon is an employee of Petitioner, to wit:

> "ATTY. JARAPA:
> Q. This Letter of Authority addressed to the taxpayer, Jo Anna Lee Santos, do you know how was this Letter of Authority sent to the taxpayer, Jo Anna Lee?
>
> MS. DELICANA:
> A. This was served last January 2, 2008 and was received by Ms. Francisca S. de Leon and her signature was affixed herein.
>
> ATTY. JARAPA:
> Q. The question is how was this sent to the taxpayer?
>
> xxx xxx xxx
>
> MS. DELICANA:
> A. Since that time, I was having an appointment with my other taxpayers in the office, I asked my husband that day, January 2, 2008, to serve this Letter of Authority including other Letters of Authority.
>
> xxx xxx xxx
>
> ATTY. JARAPA:

[84] BIR Records, Exhibit "1", BIR Records, p. 12.

Q. Would you be in a position to tell us whose employee is this Francisca S. de Leon?

MS. DELICANA:
A. I don't know but definitely, it is assured by my husband that this Letter of Authority was served to the proper venue, to the registered address and there was an employee who received this LOA and it was Francisca S. de Leon.

ATTY. JARAPA:
Q. You are really be *[sic]* in a position to categorically state whether Francisca S. de Leon, who received this Letter of Authority on the 2nd day of January 2008, is an employee of Buenaventura and Associates or Jo Anna Lee Santos, the Petitioner, would that be correct?

MS. DELICANA:
A. An employee of Jo Anna Lee Santos, because if ever an employee of Buenaventura and Associates, it would be very much easier for me, because just a text away, I can ask the accountant to come to our office."[85]

On the other hand, on cross-examination, Petitioner's witness, Mr. Josefino R. Santos, testified as follows:

"ATTY. VILLANUEVA:
Q. So are you also aware that for the taxable year 2005, St. Paul Petron gasoline station is under investigation pursuant to the Letter of Authority?

MR. SANTOS:
A. *Late na po sinabi sa amin ng aming Accountant na may mga sulat na dumating sa kanila.*

ATTY. VILLANUEVA:
Q. But you engaged the services of the Accountant?

MR. SANTOS:
A. Yes, Sir."[86]

[85] TSN, November 27, 2012, pp. 31-35.
[86] TSN, March 30, 2012, pp. 20-21.

Upon examination of the subject LOA No. 2007-00006162[87] dated December 12, 2007 and considering the above testimonies and considering further that none of Petitioner's witnesses testified that Petitioner did not receive the same nor did they testify that Francisca S. de Leon is not Petitioner's employee, the LOA is deemed properly served on Petitioner.

As to the PAN and the FAN, it must be emphasized that the requirement of informing the taxpayer of the assessment is mandatory as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations ("RR") No. 12-99, to wit:

> "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 preassessment notice shall not be required in the following cases:
>
> xxx 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.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of

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[87] BIR Records, Exhibit "1", BIR Records, p. 12.

documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

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

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

xxx xxx xxx

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

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." (*Emphasis supplied)*

From the provisions quoted above, it is clear that the sending of a PAN to a taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *shall* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the Commissioner of the BIR to strictly comply with the requirements laid down by law and its own rules is a denial of a taxpayer's right to due process.[88]

In this case, a PAN[89] dated November 16, 2009 was issued against Petitioner and the attached Registry Return[90] shows that, above the "Signature of Addressee Agent", there appears a signature acknowledging receipt of the PAN but the "Printed Name & Signature" and "Date of Delivery" were not filled up.

On re-direct examination, Respondent's witness, RO Concepcion E. Defuntorum, testified as follows:

"ATTY. VILLANUEVA:
Q. Madame Witness, with respect to registry return notice which were previously marked as Exhibits "4-D" and "5-F". Can you tell this Court what is your participation in so far as that such Notices were involved?

MS. DEFUNTORUM:
A. Only the computation.

ATTY. VILLANUEVA:
Q. I was referring to the registry return notices.

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[88] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, December 08, 2010.
[89] BIR Records, Exhibits "4" to "4-c", pp. 154-157.
[90] *Id.*, Exhibit "4-d", in between pp. 157 and 158.

MS. DEFUNTORUM:
A. No, I have no participation.

ATTY. VILLANUEVA:
Q. I mean from the Administrative Division, once they receive the registry return notice?

MS. DEFUNTORUM:
A. After it was sent to the taxpayer?

ATTY. VILLANUEVA:
Q. Yes, what will do *[sic]* the registry return receipt?

MS. DEFUNTORUM:
A. The Billing Division will attach this to the docket."[91]

And during the re-cross examination of the same witness, RO Concepcion E. Defuntorum, Petitioner's counsel made the following manifestation:

"ATTY. JARAPA:
With our just manifestation, your Honors, that with respect to Exhibit "4-D", the registry return notice, there is actually no entry on the date of delivery."[92]

On the other hand, Petitioner's witness, Mr. Josefino R. Santos, testified that Petitioner did not personally receive the notices of assessment, to wit:

"ATTY. JARAPA:
Q. And finally, from your testimonies and your documentary evidences, can you summarize the grounds in support of your Petition for Review?

MR. SANTOS:
A. Yes, Sir. Number one, Notices of Assessment were issued after three (3) years. There is no factual basis for the assessment of about Ten Million Deficiency Taxes. The Petitioner did not personally received *[sic]* Notices of Assessment. And lastly, the levied property is solely owned by the Petitioner, Sir."[93]

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[91] TSN, January 24, 2013, p. 21.
[92] TSN, January 24, 2013, p. 22.
[93] TSN, February 9, 2012, pp. 60-61.

In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[94], the Supreme Court held that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v) of Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In this case, Petitioner denies receiving the assessment notices. Such direct denial shifts the burden upon Respondent to prove that the PAN was indeed sent through registered mail and that the same was received by Petitioner. However, Respondent was unable to present sufficient evidence that the PAN was indeed sent and received by Petitioner. As noted earlier, the Registry Return did not indicate the printed name of the person who actually received the same and the date of delivery. Moreover, based on the testimony of Respondent's witness, RO Concepcion E. Defuntorum, she testified that she has no participation in the registry return notices. In other words, she has no personal knowledge on the sending and receipt of the PAN, her only participation was in the computation of the assessment. In fact, none of Respondent's witnesses testified that the signature in the Registry Return belongs to the authorized representative of, or an employee or the accountant of, Petitioner.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[95], the Supreme Court held that failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of the NIRC of 1997, as amended, renders the assessments made by the BIR void.

The Court also noted a due process violation in the sending of the FAN.

Despite Petitioner's denial of having received the notices of assessment, there is reasonable ground to believe that Petitioner indeed received the FAN[96] for the deficiency Income Tax, VAT and EWT and the Computation of Deficiency Income Tax and VAT[97], as these documents were offered as

[94] G.R. No. 157064, August 07, 2006.
[95] G.R. No. 185371, December 08, 2010.
[96] Docket, Exhibits "F" to "H", pp. 241-243.
[97] *Id.*, Exhibit "J", docket, p. 245.

Petitioner's evidence and were Petitioner's own copies and not taken from the BIR Records, although it is not clear when Petitioner received these documents.

However, aside from these documents, based on the BIR Records, Petitioner should have likewise received the Formal Letters of Demand for deficiency Income Tax and VAT[98], EWT[99], and compromise penalty[100] and the Details of Discrepancy[101]. It is interesting to note that the last two documents were not offered in evidence by Respondent. Moreover, there is no FAN for the compromise penalty.

To prove that the FAN and the FLD were sent to Petitioner, Respondent presented in evidence the applicable Registry Return[102], which shows that, above the "Signature of Addressee Agent", there appears a signature acknowledging receipt of the FAN and FLD (which appears to be the same signature on the Registry Return for the PAN) and above the "Date of Delivery" was a handwritten date – "1-11-10".

Respondent likewise presented RO Concepcion E. Defuntorum to prove the sending of the FAN and the FLD. However, as discussed earlier, she testified that she has no participation in the registry return notices and her only participation was in the computation of the assessment.

Moreover, as earlier observed, the FLD on the compromise penalty and the Details of Discrepancy were not even offered in evidence by Respondent.

After weighing the evidence of the parties, the Court finds that Respondent failed to establish that the documents received by Petitioner pertaining to the FAN/FLD were the complete set.

Also, by looking at the FAN[103] for the deficiency income tax, VAT and EWT and the Computation of Deficiency Income Tax and VAT[104] received by Petitioner, it can be readily seen that these documents do not state the law and the facts on which the assessments were based. The FANs merely contained the amount of taxes to be paid and the due date for their payment, while the Computation of Deficiency Income Tax and VAT merely shows the following:

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[98] BIR Records, Exhibit "5-b", p. 163.
[99] *Id.*, Exhibit "5-e", p. 160.
[100] *Id.*, p. 159 (not marked and offered in evidence).
[101] *Id.*, p. 158 (not marked and offered in evidence).
[102] *Id.*, Exhibit "5-f", in between pp. 165 and 166.
[103] Docket, Exhibits "F" to "H", pp. 241-243.
[104] *Id.*, Exhibit "J", p. 245.

Computation of Deficiency Income Tax

Net Income per Return		Php 196,720.00
Add: Undeclared Income due to no Professional Fee Expense on F/S		20,000.00
50% Disallowance		
Purchases	16,073,588.90	
Machine & Oil	16,247.50	
Light & Power	37,410.00	
Representation	12,480.00	
Repairs & Maintenance	12,500.00	
Office Supplies	3,605.00	
Telephone	9,910.00	
Toll Fee	3,240.00	
Contributions	5,000.00	
Food and Subsistence	10,990.00	
Transportation	2,130.00	
Miscellaneous	8,945.00	16,196,046.40
Net Income per Investigation		16,412,766.40
Less: Personal Exemption		20,000.00
Taxable Net Income		16,392,766.40
Income Tax Due		5,210,685.25
Less: Tax paid		31,680.00
Deficiency Income Tax		5,179,005.25
Interest		3,926,203.88
TOTAL AMOUNT DUE		**Php9,105,209.13**

Computation of Deficiency Value-added Tax

Sales per VAT returns	Php 6,526,014.50
Add: Undeclared Professional Expense	20,000.00
Sales per Investigation	6,546,014.50
Output Tax	654,601.45
Less: Creditable Input Tax	-
Value-added Tax due	654,601.45
Less: Tax paid	14,147.99
Deficiency Value-added Tax	640,453.46
Interest	514,091.99
TOTAL AMOUNT DUE	**Php1,154,545.45**

From the above, only a tabular computation of the deficiency taxes was provided without further explanation. Hence, the FANs, as received by Petitioner, were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against Petitioner.

A perusal of the Details of Discrepancy[105], which was not offered in evidence, shows Respondent's legal and factual bases for the assessment

[105] BIR Records, p. 158.

(although the Court will not delve into these bases). Unfortunately, as discussed earlier, Respondent failed to prove that the Details of Discrepancy was likewise received by Petitioner.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[106], the Supreme Court held that the formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void. The word "shall" in Section 228 of the NIRC and RR No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice.

Since Respondent was not able to prove that Petitioner likewise received the FLD and the Details of Discrepancy containing the explanation for the assessments, then, Petitioner was not informed of the legal and factual bases of the assessment.

In sum, the PAN is void for failure of Respondent to prove that it was sent and received by Petitioner; while the FAN is void for failure to state the law and/or facts upon which it is based considering that Respondent failed to prove that Petitioner received the complete set of the FAN/FLD.

As to Respondent's argument that the assessments have become final and executory due to the belated filing of Petitioner's administrative protest, the Court is not convinced.

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[107], the Supreme Court held that it "need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit." Considering that the Court already found the assessment void, the issue as to whether Petitioner timely filed a protest on the void assessment became irrelevant.

Hence, even granting that Petitioner received the FAN on January 11, 2010, but only filed her Protest of Assessment on November 17, 2010, still the belated filing of the protest is of no moment.

In view of the violation of Petitioner's right to due process provided under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, the PAN and the FAN/FLD are all considered void.

[106] G.R. No. 215957, November 09, 2016.
[107] G.R. No. 185371, December 08, 2010.

Moreover, the issuance of a valid formal assessment is a substantive prerequisite to tax collection.[108] Hence, Respondent violated Petitioner's right to due process when he issued the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, and the Notices of Tax Lien because, as discussed earlier, the PAN and the FAN/FLD are void. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[109]

In view of the foregoing, the Court deems it unnecessary to discuss the other issues raised by Petitioner.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Letter-Decision dated November 24, 2010 rendered by the Revenue District Officer of Revenue District Office No. 25-B is **REVERSED** and the Formal Letter of Demand and the Final Assessment Notices issued against Petitioner for deficiency Income Tax, VAT, EWT, and compromise penalty in the total amount of Php10,296,929.18 for taxable year 2005 are **CANCELLED** and **WITHDRAWN** for violation of Petitioner's right to due process. Consequently, the Preliminary Collection Letter dated March 10, 2010, the Final Notice Before Seizure dated March 22, 2010, the Warrant of Distraint and/or Levy dated May 14, 2010, the Notice of Tax Lien dated October 20, 2010, and the Notice of Tax Lien dated September 23, 2010 served on October 06, 2010 at the Registry of Deeds, Meycauayan, Bulacan for Transfer Certificate of Title No. T-369883(M) are likewise **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Ma. Belen M. R-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[108] Commissioner of Internal Revenue v. Menguito, G.R. No. 167560, September 17, 2008.
[109] Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc., G.R. No. 198677, November 26, 2014.

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above amended decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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