REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MANILA MEDICAL SERVICES, INC. (MANILA DOCTORS HOSPITAL), Petitioner,	CTA Case No. 8867
	Members:
-versus-	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 09 2019 3:00 P.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On January 30, 2019, the Court rendered a Decision,[1] disposing the case as follows:

> **WHEREFORE**, the instant Petition for Review filed on August 13, 2014, by petitioner Manila Medical Services, Inc. (Manila Doctors Hospital), is hereby **GRANTED**.
>
> Accordingly, the Assessment Notices issued against petitioner Manila Medical Services, Inc. (Manila Doctors Hospital) by respondent Commissioner of Internal Revenue for alleged deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax, including compromise penalties, in the aggregate amount of ₱127,563,834.51 for taxable year 2009, as well as the Warrant of Distraint and/or Levy dated July 10, 2014, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**.

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[1] Docket, pp. 1078-1099.

In his Motion for Reconsideration dated February 19, 2019,[2] respondent concedes that save for the Certification dated September 25, 2014,[3] all other evidence in support of his defense were not formally offered. Nonetheless the evidence not formally offered were identified by testimony of his witnesses, hence, they may be considered by the Court in resolving the case, citing jurisprudence[4] as authority. Since the documents intended to be offered were identified by his witnesses Ma. Paz Arcilla,[5] Edna Ortalla,[6] Angeles Mores,[7] Armando Macatangay[8] and Teresita Reyes,[9] and were in the BIR Record,[10] they must be considered by the Court in adjudicating the present controversy.

Anent the merits of the assessment, respondent alleges that since the PAN dated December 10, 2013 was personally served on petitioner on December 13, 2013 and was received on even date by its personnel Marites Acop,[11] there was valid issuance of, and receipt by petitioner of the PAN pursuant to Section 228 of the NIRC, as amended.

There was likewise a valid service of the FAN/FLD with Details of Discrepancy all dated December 27, 2013 as they were served via registered mail on even date, and were received by a certain Jose De Guzman on February 4, 2014 per the Certification dated September 25, 2014 issued by the Head Records Unit of Manila Central Post Office during the pertinent period.

Finally, respondent maintains that he stated the factual and legal bases of the subject assessments by providing petitioner with the pertinent Details of Discrepancy enclosed in the FAN/FLD. With the foregoing, respondent concludes

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[2] Ibid. at pp. 1102-1110.
[3] Exhibit R-55.
[4] *Dizon vs. Court of Tax Appeals,* G.R. No. 140944, April 30, 2008.
[5] The judicial affidavit (JA) of said witness allegedly identified Exhibits R-37 to R-44, and R-56, BIR Record, pp. 206-226.
[6] The witness allegedly identified Exhibits R-25, and R-34 to R-36, BIR Record, pp. 236-255.
[7] The witness allegedly identified Exhibits R-45 to R-48, BIR Record, pp. 372-380.
[8] The witness allegedly identified Exhibits R-37 to R-44, and R-56 to R-57, BIR Record, pp. 191-208.
[9] The witness allegedly identified Exhibits R-1 to R-24, R-34 and R-36, BIR Record, pp. 256-371.
[10] See Notes 6 to 9.
[11] The individual who allegedly received the Letter of Authority (Exhibit R-11), and Notice of Informal Conference (Exhibit R-19).

that petitioner must be held entirely accountable for the deficiency IT, VAT, EWT, plus compromise penalties covering TY 2009 in the amount of ₱127,563,834.51.

On the other hand,[12] petitioner counters that respondent's own witness Teresita P. Reyes categorically declared that the copy of the PAN had no clear indication of petitioner's actual receipt, meaning that there was no valid personal service of the PAN upon it. Another respondent's witness, Armando Macatangay, neither validated nor assured that the FAN/FLD was actually received by petitioner. Such invalid service of the PAN, as well as the FAN/FLD render the subject assessments issued against it null and void.

Anent the merits of the subject assessments, petitioner retorts that its sale of drugs or pharmaceutical items to the hospital's in-patients is included in the term "hospital services" since it is necessary and essential for the services rendered by the hospital to its patients, which is exempt from VAT by express provision of Section 109(G) of the NIRC, as amended, and supported by various court decisions[13] on the matter.

THE RULING OF THE COURT

We deny the instant Motion.

Basic is the provision in Section 34, Rule 132 of the Rules of Court which states that the court shall consider no evidence which has not been formally offered. Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. xxx The mere fact that a

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[12] Petitioner's Comment/Opposition (To Respondent's Motion for Reconsideration dated 21 February 2019), docket, unpaged.

[13] Petitioner cites the cases of *Hermano (San) Miguel Febres Cordero Medical Educational Foundation vs. Commissioner of Internal Revenue,* CTA Case No. 8194, May 15, 2012; *Perpetual Succor Hospital, Inc., et al. vs. Commissioner of Internal Revenue,* CTA Case No. 7304, December 1, 2010; and *Commissioner of Internal Revenue vs. Professional Services, Inc.,* CA-G.R. SP No. 45892, March 13, 1998 as authorities.

particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.[14]

As admitted by respondent, apart from the Certification dated September 25, 2014, he failed to formally offer the documents identified by his witness. As such, they may not be considered by the Court in determining the merits of his defense. For failure of respondent to convincingly show that the PAN, along with the FAN/FLD with Details of Discrepancy were duly issued, served to, and received by petitioner, the invalidation of the subject assessments must be sustained.

Assuming *ex gratia argumenti* that the documents not formally offered were to be considered by the Court as respondent persistently suggests, the nullity of the assessments could not be disregarded due to his failure to accord petitioner the full benefit of the period to respond to the PAN as required under Section 228 of the NIRC, as amended, as implemented by Section 3.1.2 of Revenue Regulations (RR) No. 12-99.

Section 228 of the NIRC, as amended decrees that a taxpayer must be afforded adequate opportunity to refute the findings in the PAN in consonance with pertinent revenue regulations, to wit:

> SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, <u>he shall first notify the taxpayer of his findings</u>: Provided, however, That a pre-assessment notice shall not be required in the following cases: xxx
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> xxx xxx xxx

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[14] See *Heirs of Mabborang vs. Mabborang,* G.R. No. 182805, April 22, 2015, citing *Heirs of Pasag, et. al. vs. Spouses Lorenzo, et. al.*, 550 Phil. 571, 579 (2007), citing in turn, *Parel vs. Prudencio,* 521 Phil. 533, 545 (2006); *Katigbak vs. Sandiganbayan*, 453 Phil. 515, 542 (2003); *Ong vs. Court of Appeals*, 361 Phil. 338, 350 (1999); *People of the Philippines vs. Alicante*, 388 Phil. 233, 260 (2000).

> 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.
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> 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. xxx (underscoring supplied)

To effectuate the above provision, Section 3.1.2 of RR No. 12-99 accords the taxpayer a period of fifteen (15) days from receipt of the PAN to contest the proposed assessment stated therein, *viz.*:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
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> 3.1 *Mode of procedures in the issuance of a deficiency tax assessment*:
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> xxx xxx xxx
>
> 3.1.2 *<u>Preliminary Assessment Notice (PAN)</u>*. — 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). <u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN</u>, 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.
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability inclusive of the applicable penalties. xxx (emphasis supplied)

In *Commissioner of Internal Revenue vs. Enron Subic Power Corporation,*[15] the Supreme Court defined a notice of assessment as a declaration of deficiency of taxes issued to a taxpayer who among others, neglected to respond to a PAN within the period of time prescribed by regulations, thus:

> A notice of assessment is:
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> [A] declaration of deficiency taxes issued to a [t]axpayer <u>who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time</u>, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course.
>
> The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes **shall state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void.** (underscoring supplied; boldfacing in the original)

In fine, a taxpayer is afforded a fifteen (15)-day period from receipt of the PAN to register its reply or response thereto. Only upon the lapse of such fifteen (15)-day period may the taxpayer be deemed in default, and in which case respondent may be legally permitted to issue a FAN/FLD. Conversely, a FAN/FLD issued prior to the expiration of such fifteen (15)-day period is not a notice of assessment contemplated under the Tax Code, its implementing rules, as well as pertinent jurisprudence on the matter.

The PAN dated December 10, 2013 was allegedly served by respondent to petitioner via personal service on December 13, 2013.[16] Thus, counting fifteen (15) days from the alleged receipt of the PAN, petitioner had until January 2, 2014[17] to make known its protestations on respondent's findings, if any. Respondent's precipitate issuance of the alleged FAN/FLD with Details of Discrepancy on December

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[15] G.R. No. 166387, January 19, 2009.

[16] BIR Record, p. 409; Answer to Question No. 15, Judicial Affidavit (JA) of Edna R. Ortalla, docket, p. 241.

[17] The last day for petitioner to institute a response to the PAN is on December 28, 2013 which fell on a Saturday. December 29, 2013 fell on a Sunday while December 30, 2013 to January 1, 2014 are holidays.

27, 2013,[18] or six (6) days prior to the expiration of the mandated fifteen (15)-day period for petitioner to reject the findings in the PAN rendered the subject assessments a patent nullity and without any legal consequence, justifying its cancellation and withdrawal.

WHEREFORE, respondent's *Motion for Reconsideration* dated February 19, 2019 is **DENIED**. The impugned Decision of January 30, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[18] BIR Record, pp. 410-418; Answer to Question No. 8, JA of Revenue Officer Ma. Paz Arcilla, docket, p. 213.