Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

YUKON GENERAL MANPOWER SERVICES CORPORATION, Petitioner,	**CTA Case No. 8743**
	Members: CASTAÑEDA, JR., *Chairperson*
-versus-	CASANOVA, *and*
	COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 01 2015 1:07 p.m.

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DECISION

CASANOVA, *J.*:

This resolves the Petition for Review[1] filed by petitioner Yukon General Manpower Services Corporation on December 6, 2013, which seek to lift the Warrant of Garnishment and the cancellation and withdrawal of the alleged tax deficiencies for taxable year 2006, as well as other compromise penalties, interests and surcharges in the total amount of ₱7,216,980.40.

The facts, as borne by the records of this case, are as follows:

Petitioner Yukon General Manpower Services Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at the Fifth Floor, Rose Industries Bldg., No. 11 Pioneer Street, Kapitolyo, Pasig City.[2]

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[1] Docket (Vol. I), pp. 14-27.
[2] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 348.

Respondent, on the other hand, is the duly-appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code of 1997 (NIRC) and other tax laws, rules and regulations. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Petitioner's Annual Income Tax Return and Quarterly VAT Returns for taxable year 2006 were filed on the following dates[4]:

Tax Return	Date of Actual Filing
VAT 1st Quarter	April 21, 2006
VAT 2nd Quarter	July 20, 2006
VAT 3rd Quarter	October 20, 2006
VAT 4th Quarter	January 23, 2007
Income Tax 2006	April 16, 2007

Respondent issued a Warrant of Garnishment[5] relative to deficiency income tax and value-added tax assessments for taxable year 2006 in the total amount of ₱7,216,980.40 it allegedly issued to the petitioner.[6]

On November 11, 2013, petitioner received a letter[7] from the Pasig Kapitolyo Branch of Banco de Oro (BDO), informing it that a Warrant of Garnishment[8] was issued by respondent commanding BDO to garnish petitioner's funds to cover the amount of deficiency income tax and value-added tax assessed against petitioner for the taxable year 2006 in the total amount of ₱7,216,980.40.

On November 22, 2013, petitioner filed with respondent an Administrative Protest Letter[9] dated November 22, 2013, disputing the issuance of the Warrant of Garnishment in the absence of any Final Assessment Notice (FAN) and/or Final Letter of Demand served upon the petitioner.[10]

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[3] Par. 2, Stipulated Facts, JSFI, Docket, p. 348.
[4] Par. 5, Stipulated Facts, JSFI, Docket, p. 349.
[5] Exhibit "R-35".
[6] Par. 3, Stipulated Facts, JSFI, Docket, p. 348.
[7] Exhibit "P-1".
[8] Exhibit "R-35".
[9] Exhibit "P-2".
[10] Par. 4, Stipulated Facts, JSFI, Docket, p. 349.

Petitioner filed the instant Petition for Review on December 6, 2013, seeking the lifting of the Warrant of Garnishment and cancellation and withdrawal of the alleged tax deficiencies, as well as compromise penalties, interests and surcharges in the total amount of P7,216,980.40 for taxable year 2006. The Petition for Review, likewise, includes a prayer for the suspension of collection of taxes.

Within the extended time granted by the Court[11], respondent filed her Answer[12] on January 16, 2014, and interposed the following special and affirmative defenses:

> "11. The Honorable Court has no jurisdiction to entertain the instant petition for review. Assessment Notice Nos. 30-2006-IT(1) and 30-2006-VT(2) was issued on January 22, 2010, well within the three year prescriptive period, and without the petitioner having timely filed a protest to the said assessment. Hence, said assessment has become final and demandable. Section 228 of the Tax Code of 1997 provides, thus:
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>> *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*
>>
>> *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.*

[11] Order dated January 2, 2014, Docket, p. 56.
[12] Docket, pp. 58-64

xxx xxx xxx

12. The registered address of the petitioner at the time the pre-assessment and final assessment was issued was at 1104 Federal Tower Condominium, Dasmariñas Street, Binondo, Manila.

13. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity (*Behn Meyer & Co. vs. Collector of Internal Revenue*, 27 Phil. 647), Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671*); and assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villegas, 8 SCRA 547*).

14. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals, et. Al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]*).

15. As provided in Section 218 of the Tax Code of 1997, as amended, no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by the Code.

16. Taxes are the life blood of the government and should be collected without unnecessary hindrance (Marcos II vs. Court of Appeals, 273 SCRA 47). Public policy dictates that collection of taxes should be accorded paramount importance for the sustenance of government. Thus, for the interest of the government, the subject assessment must be paid by the respondent without unnecessary delay."

The case was set for Pre-Trial Conference[13] on February 27, 2014.

On January 30, 2014, the Court granted petitioner's motion for suspension of collection of taxes subject to petitioner's filing of a bond from a reputable surety company duly accredited by the Supreme Court in an amount equivalent to one-half times the amount being collected.[14]

Petitioner's Pre-Trial Brief[15] was filed on February 20, 2014 while respondent's Pre-Trial Brief[16] was filed on February 24, 2014.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[17] on March 12, 2014 which was approved and adopted by the Court in the Pre-Trial Order[18] dated March 21, 2014 which also terminated the Pre-Trial.

During trial, petitioner presented its lone witness, Ms. Sylvia C. Carpio, General Manager of Yukon General Manpower Services Corporation.

After completion of the presentation and formal offer of evidence for the petitioner, the Court admitted as evidence for petitioner Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11" and "P-12".[19]

Subsequently, respondent presented the following witnesses: Ms. Anita S. Marinas, Revenue Officer I; Mr. Ronnie Roel Y. Bolledo, Revenue Office II-Reviewer; Ms. Ma. Paz Arcilla, Revenue Officer IV – Chief, Billing Section; Mr. Armando C. Macatangay, Administrative Assistant III; and Ms. Felicidad A. Dela Rosa, Revenue Officer III-Collection.

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[13] Notice of Pre-Trial Conference dated January 20, 2014, Docket, p. 65.
[14] Resolution dated January 30, 2014, Docket, pp. 162-163.
[15] Docket, pp. 250-258.
[16] Docket, pp. 335-341.
[17] Docket, pp. 348-354.
[18] Docket, pp. 445-451.
[19] Resolution dated May 27, 2014, Docket, pp. 546-547.

Respondent also presented and formally offered pieces of documentary evidence. In a Resolution[20] dated October 27, 2014, the Court admitted respondent's Exhibits "R-1" to "R-41-A".

The Memorandum for the Petitioner[21] was submitted on November 26, 2014, while Respondent's Memorandum[22] was filed on December 9, 2014. Accordingly, the case was submitted for decision on December 18, 2014.[23]

The parties submitted the following issues[24] for the Court's resolution:

> "1. Whether the Honorable Court of Tax Appeals has jurisdiction over the present Petition for Review.
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> 2. Whether a Preliminary Assessment Notice for deficiency income tax and value added tax for the taxable year 2006 was properly issued by the Respondent, served upon petitioner and was duly received by the Petitioner.
>
> 3. Whether a Formal Assessment Notice/Formal Letter of Demand for deficiency income tax and value-added tax for the taxable year 2006 was properly issued by the Respondent, served upon Petitioner and was duly received by the Petitioner.
>
> 4. Whether the deficiency income tax and value-added tax assessments allegedly issued by the Respondent for the taxable year 2006, allegedly covered by Assessment Nos. 30-2006-IT(1) and 30-2006-VT, dated January 22, 2010 have become final and demandable.
>
> 5. Whether the issuance of the subject Warrant of Garnishment was valid.

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[20] Docket, pp. 666-667.
[21] Docket, pp. 668-683.
[22] Docket, pp. 687-695.
[23] Resolution dated December 18, 2014, Docket, p. 696.
[24] Stipulated Issues, JSFI, Docket, pp. 349-350.

6. Whether the right of the Respondent to issue any deficiency income tax assessment against the Petitioner for the taxable year 2006 has already prescribed."

The Court has jurisdiction over the Petition for Review.

Petitioner contends that the Court has jurisdiction over the Petition for Review filed on December 6, 2013. It alleges that it only learned about the Warrant of Garnishment on November 11, 2013. Thus, petitioner contends that it has thirty days from discovery, or until December 11, 2013 within which to file the instant Petition.

Respondent, on the other hand, argues that the Court has no jurisdiction to entertain the instant petition for review as the Assessment Notices Nos. 30-2006-IT(1) and 30-2006VT(2) had become final for failure of petitioner to timely file a protest to the said assessment.

The Court of Tax Appeals , being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. Section 7 of Republic Act No. 9282[25] 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 Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other

[25] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes, April 23, 2004.

> 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis ours*)

In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*[26], the word "decisions" in the above quoted provision of RA No. 9282, as amended, has been interpreted to mean the decisions of the Commissioner of Internal Revenue ("CIR") on the protest of the taxpayer against the assessments. Corollary thereto, Section 228 of NIRC, as amended provides for the procedure for protesting an assessment. It states:

> "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:
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> 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.

[26] G.R. No. 175097, February 5, 2010, 611 SCRA 692.

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of 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."

The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.[27]

However, in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[28], the Supreme Court ruled that "the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."

In this case, while the summary remedy in question is garnishment, the Court finds the abovementioned ruling to be applicable. The Court, therefore, has jurisdiction to determine the validity of the Warrant of Garnishment. In this case, the determination of which also includes the determination of the validity of the assessments for which the Warrant of Garnishment was issued.

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[27] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, the Court of Tax Appeals, and the Court of Appeals,* G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[28] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

There was no valid service of the PAN and FAN.

The assessment notices issued by respondent to petitioner for deficiency income tax and VAT for taxable year 2006 never became final and demandable.

Petitioner avers that it was not afforded the benefit of due process as it did not receive any Preliminary Assessment Notice ("PAN"), Formal Assessment Notice ("FAN"), and Formal Letter of Demand ("FLD") before being made to suffer the effect of a Warrant of Garnishment. On the other hand, respondent claims that the PAN, FAN and FLD were sent to petitioner through registered mail at its registered business address on January 7, 2010 and January 22, 2010 respectively.

Petitioner categorically denies receipt of the PAN, FAN and FLD imputing any outstanding tax liabilities for taxable year 2006, through the testimony of its witness, Ms. Sylvia C. Carpio, in her Judicial Affidavit, as follows:

> "Q27: Did you receive a Preliminary Assessment Notice for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A27: No, we did not.
>
> Q28: Did you receive a Final Assessment Notice for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A28: No, we did not.
>
> Q29: Did you receive a Formal Letter of Demand for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A29: No, we did not."[29]

[29] Judicial Affidavit of Ms. Sylvia C. Carpio, Docket, p. 75.

The relevant provisions of law regarding the right of taxpayer to procedural due process in the issuance of assessment is decreed in Section 228 of the NIRC of 1997, as amended and Section 3 of Revenue Regulations No. 12-99[30], 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**."
>
> "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*:
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> xxx xxx xxx
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> 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, <u>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</u>

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[30] Implementing the Provisions of the National Internal Revenue Code of1997 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, September 6, 1999.

> 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 ours*)

The Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*[31], held that procedures provided in Section 228 of the NIRC and Section 3 of RR No. 12-99 are mandatory, noncompliance therewith renders the assessment void.

The records of this case reveals that the PAN issued on January 6, 2010 was sent to petitioner, through registered mail on January 7, 2010, under Registry Receipt No. 926153[32] at its registered address at 1104 Federal Tower Condo., Dasmariñas Street, Binondo, Manila. Likewise, the FAN and FLD[33] issued on January 22, 2010 were sent to

[31] G.R. No. 197515, July 2, 2014, 729 SCRA 113.
[32] Exhibits "R-27", "R-27-A" and "R-28".
[33] Exhibits "R-24", "R-25", "R-26" and "R-26-A".

petitioner to the same registered business address on January 22, 2010 by registered mail under Registry Receipt No. 900993[34].

Respondent's witness, Mr. Armando C. Macatangay, during his cross-examination testified when and to where he mailed the PAN and the FAN, to wit:

"Q: I am going to a next point, Mr. witness in your Question and Answer No. 4, I would just like to know, Mr. Witness, if you know, what is the address of the petitioner or what is the address you used to mail the letters to the petitioner?

Justice Castañeda:
You can refer to the records.

Atty. Montenegro:
Yes please, you can peruse the records, if you remember only.

Witness:
A: **1104 Federal Tower Condominium, Dasmariñas St., Binondo, Manila**, sir.

Q: Thank you. Now Mr. witness, in Question No. 6 and in Question No. 7, you mentioned that you were asked to mail the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN), respectively to the petitioner but you did not indicate when you actually mailed the letter, you only mentioned the date that it was sent to you for mailing, do you still remember the actual dates when you mailed these letters to the petitioner? You can use the records.

A: **The Preliminary Assessment mailed on January 7, 2010 and then the Final Assessment or Formal Demand Letter on January 22, 2010**.

Q: Thank you, Mr. Witness and both letters or issuances, the PAN and the FAN, Formal Letter of

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[34] Exhibit "R-29".

Demand were sent to the address that you mentioned earlier?

A: Yes, sir."[35] (*Emphasis ours*)

However, petitioner's witness, Mrs. Sylvia C. Carpio, testified that, while petitioner used to be located at 1104 Federal Tower Cond., Dasmariñas Street, Binondo, Manila, it transferred to Pasig City on 2004, to wit:

"Q43: Ms. Witness, is the office of the Petitioner located in Pasig City?

A43: Yes, sir.

Q44: Ms. Witness, since when has your corporation been located in Pasig City?

A44: Since 2004.

xxx xxx xxx

Q49: You said that the Petitioner has been located in Pasig City since 2004. Prior to 2004 or for the period from 2002 up until 2004, where was the Petitioner located?

A49: Petitioner used to be located at 1104 Federal Tower Condominium, Dasmariñas Street, Binondo, Manila."[36]

Records also reveal that petitioner submitted an Application for Registration Information Update[37] on March 31, 2009[38] to indicate its change in registered address to 2F Rose Industries Bldg. #11 Pioneer St., Bario Kapitolyo Pasig City. The change in the address of petitioner was reflected in its Certificate of Registration dated May 25, 2009[39] issued by BIR RDO 43A. The transfer from RDO 30 to RDO 43A was on May 14, 2009 was also indicated therein.

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[35] TSN dated August 18, 2014, pp. 11-12.
[36] Judicial Affidavit of Ms. Sylvia C. Carpio, Docket, pp. 77-78.
[37] Exhibit "P-9".
[38] Exhibit "R-37".
[39] Exhibit "P-10".

Petitioner, therefore, would not have received the PAN issued on January 6, 2010 and sent through registered mail on January 7, 2010, at 1104 Federal Tower Cond., Dasmariñas Street, Binondo, Manila, since its address at that time was already 2F Rose Industries Bldg. #11 Pioneer St., Kapitolyo Pasig City. The same thing with the FAN and FLD, petitioner clearly did not receive them as they were sent to its former address.

Since the PAN, FAN and FLD were sent to the wrong address, there was no valid service of said notices to petitioner. Consequently, the subject assessments are void.

It must be noted that as ruled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[40], failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, renders the assessments made by the CIR void.

Likewise, the law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice.[41] Since petitioner never received the FAN and FLD, it was not, therefore, informed of the assessments made against it by respondent nor was it informed of the legal and factual bases of the same. This also renders the assessments made against petitioner void.

Respondent's argument that petitioner is estopped from claiming that the address indicated in the registration information is no longer its business address is bereft of merit.

Assuming that petitioner was not able to update its registered business address, the fact still remains that respondent was already aware of petitioner's change of address since September 28, 2007 as testified by respondent's witness, Revenue Officer Anita Mariñas, in her Judicial Affidavit dated February 17, 2014, to wit:

> "Q10. Madam Witness, after this Letter of Authority was issued, what action did you take if any?

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[40] G.R. No. 185371, December 8, 2010, 637 SCRA 633.
[41] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014, 729 SCRA 113.

A. Sir, we served it personally, together with the Request for Presentation of Records (First Notice), to petitioner at its address at 5/F Rose Industries Bldg., #11 Pioneer Street, Kapitolyo, Pasig City on September 28, 2007 and it was received by Ms. Theresa B. Mesia."

Likewise, the Summons and/or Subpoena Duces Tecum dated February 29, 2008[42] and Notice of Informal Conference dated June 4, 2008[43], were served personally by respondent's witness, Ms. Anita Mariñas, to petitioner's new address in Pioneer Pasig.[44]

Furthermore, the following documentary exhibits of respondent also indicate or mention the new address of petitioner:

1. Final Request for Presentation of Documents dated November 29, 2007;[45]
2. Memorandum dated February 8, 2008;[46]
3. Memorandum dated June 26, 2008;[47]
4. Memorandum dated December 22, 2009;[48]
5. Revenue Officer's Audit Report on IT (Form No. 0500);[49]
6. Revenue Officer's Audit Report on VAT (Form No. 0507);[50]
7. Warrant of Garnishment addressed to Bank of the Philippines Islands;[51]
8. Warrant of Garnishment addressed to Union Bank of the Philippines;[52]
9. Warrant of Garnishment addressed to China Banking Corporation;[53]
10. Warrant of Garnishment addressed to Philippine Savings Bank;[54]

[42] Exhibit "R-6".
[43] Exhibit "R-9".
[44] Cross Examination by Atty. J. Carlito M. Montenegro, TSN dated June 25, 2014, pp. 15-16, 18-19.
[45] Exhibit "R-4".
[46] Exhibit "R-5".
[47] Exhibit "R-10".
[48] Exhibit "R-17".
[49] Exhibit "R-19".
[50] Exhibit "R-20".
[51] Exhibit "R-31".
[52] Exhibit "R-32".
[53] Exhibit "R-33".
[54] Exhibit "R-34".

11. Warrant of Garnishment addressed to United Coconut Planters Bank;[55]
12. Warrant of Garnishment addressed to Banco de Oro Universal Bank;[56]

The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Rose Industries Bldg. Pioneer St., Kapitolyo Pasig City.

In the case of *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*[57], the Supreme Court affirmed the cancellation and setting aside of an assessment against a taxpayer wherein the CIR still insisted in mailing the FAN to respondent's old address even if she became aware of respondent's new address as shown by documents replete in its records. The pertinent portion of the decision reads:

> "Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was "returned to sender." This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City. Yet, despite this occurrence, **petitioner still insisted in mailing the FAN to respondent's old address.**
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> **Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed.**
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> xxx xxx xxx
>
> As to the second assigned error, petitioner's reliance on the provisions of Section 3.1.7 of BIR Revenue Regulation No. 12-99 as well as on the case of Nava v. Commissioner of Internal Revenue is misplaced, because in the said case, **one of the requirements of a**

[55] Exhibit "R-35".
[56] Exhibit "R-36".
[57] G.R. No. 198677, November 26, 2014.

> **valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation. In the instant case, the FAN was sent to the wrong address. Thus, the CTA is correct in holding that the FAN never attained finality because respondent never received it, either actually or constructively.**" (*Emphasis ours*)

In this case, the assessment notices issued by respondent to petitioner for deficiency income tax and VAT for taxable year 2006 never became final and demandable as petitioner failed to receive said notices.

The issuance of the subject Warrant of Garnishment was not valid.

Respondent's issuance of the Warrant of Garnishment violated petitioner's right to due process because the assessment notices issued by respondent to petitioner for deficiency income tax and VAT for taxable year 2006 never became final and demandable.

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.[58]

In the instant case, petitioner has not been properly informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.

Thus, the issuance of the subject Warrant of Garnishment was not valid.

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[58] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.,* G.R. No. 198677, November 26, 2014.

The right of respondent to issue any deficiency income tax assessment against petitioner for taxable year 2006 has already prescribed.

The period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, as amended, which reads:

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

It is clear from the foregoing that internal revenue taxes must be assessed within three (3) years from the date of actual filing of the tax return or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

In this case, the date of filing of petitioner's Annual Income Tax Return and Quarterly VAT Returns for taxable year 2006 as well as the end of the three-year prescriptive period are as follows:

Tax Return	Date of Actual Filing	End of 3 Year Prescriptive Period
VAT 1st Quarter[59]	April 21, 2006	April 25, 2009

[59] Exhibit "P-5".

VAT 2nd Quarter[60]	July 20, 2006	July 25, 2009
VAT 3rd Quarter[61]	October 20, 2006	October 25, 2009
VAT 4th Quarter[62]	January 23, 2007	January 25, 2009
Annual Income Tax 2006[63]	April 16, 2007	April 16, 2010

Considering that there was no valid PAN, FAN and/or FLD received by petitioner, and the end of the three-year prescriptive period has long ended, respondent's right to issue any deficiency income tax assessment against petitioner for taxable year 2006 has already prescribed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Garnishment is hereby **LIFTED**. The assessments for tax deficiencies for taxable year 2006, as well as other compromise penalties, interests and surcharges in the total amount of ₱7,216,980.40 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[60] Exhibit "P-6".
[61] Exhibit "P-7".
[62] Exhibit "P-8".
[63] Exhibit "P-4".

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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