Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

KENNETH C. PUNDANERA, Petitioner,	**CTA Case No. 8333**
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 02 2014 3:15 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] filed by petitioner Kenneth C. Pundanera seeks the cancellation and withdrawal of the Formal Letter of Demand No. 34-2006 and Assessment Notices No. 34-2006 for alleged deficiency income tax, value-added tax, and expanded withholding tax in the total amount of Twenty Four Million Nine Hundred Seventy Six Thousand One Hundred Seventy Nine Pesos and 17/100 (Php24,976,179.17) for taxable year 2006, all dated January 14, 2010, and the Warrant of Distraint and/or Levy dated August 25, 2011 issued by respondent Commissioner of Internal Revenue.

Petitioner, Kenneth C. Pundanera, is of legal age, Filipino, doing business under the trade name/style Unioil Paco Service Station and Unioil Bagbag Service Center, and may be served with pleadings, notices, orders and other processes through Britanico Sarmiento & Ringler Law Offices, 7th Floor, BDO Plaza, 8737 Paseo de Roxas, Makati City.

[1] Docket (Vol. I), pp. 6-34

Respondent is the duly appointed Commissioner of Internal Revenue with address at the Bureau of Internal Revenue National Office, Agham Road, Diliman, Quezon City.[2]

Petitioner filed his Annual Income Tax Return for taxable year 2006 on April 16, 2007.[3]

On October 18, 2007, respondent issued the Letter of Authority LOA 2007 00000746 for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2006 to December 31, 2006[4] and the First Notice dated October 19, 2007[5].

Respondent, likewise, sent the Second Request for Presentation of Documents dated January 14, 2008[6] and the Final Request for Presentation of Records dated January 28, 2008[7], which petitioner both received through Edmer Chavez on January 16, 2008 and January 29, 2008, respectively.

On February 16, 2009, Revenue Officer Agatha Kristie G. Eugenio-Buizon recommended to the Revenue District Officer of the Revenue Region No. 6, Revenue District Office No. 34, Paco-Pandacan-San Andres-Sta. Ana, Manila the issuance of Subpoena Duces Tecum to compel petitioner to submit his books of accounts and other accounting records for appropriate examination.[8] As a result, Summons and/or Subpoena Duces Tecum were released on February 20, 2009[9].

In a letter dated May 7, 2009, respondent [issued a Letter] informed petitioner of the submitted revised report recommending the latter's deficiency taxes in the amount of P23,863,105.82 for taxable year 2006, and giving petitioner an opportunity to arrange for an informal conference.[10] Likewise, in a Memorandum dated June 2, 2009, Revenue Officer Agatha Kristie G. Eugenio-Buizon recommended the issuance of the Preliminary Assessment Notice against the petitioner.[11]

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[2] Par. 2.2, Joint Stipulation of Facts (JSF), Docket (Vol. I), p. 290.
[3] Exhibit "J".
[4] Exhibit "1", BIR records, p. 8.
[5] Exhibit "2", BIR records, p. 7.
[6] Exhibit "4", BIR records, p. 106.
[7] Exhibit "5", BIR records, p. 107.
[8] Exhibit "6", BIR records, p. 114.
[9] Exhibit "7", BIR records, p. 116.
[10] Exhibit "A"; Exhibits "8", "14", "14-a", "14-b", BIR records, pp. 200-212.
[11] Exhibits "13" and "13-a", BIR records, pp. 218-219.

In reply, petitioner sent a Letter addressed to Renato J. Mina and Bob Dureza on July 2, 2009 and requested for 15 days or until July 17, 2009, within which to submit a letter with supporting documents to contest the deficiency taxes.[12]

Consequently, petitioner sent a Letter dated July 17, 2009, through registered mail to respondent, interposing objections to the recommended deficiency taxes, and requesting for reevaluation of the same.[13]

In a Preliminary Assessment Notice dated December 21, 2009[14], respondent assessed petitioner of the following deficiency taxes:

"**DEFICIENCY INCOME TAX**
(Sec. 34-Sec.6B, NIRC)

Taxable Income per Return		P 489,205.50
Add: Adjustments per Audit –		
Disallowanced Expenses – unsupported		
Unsupported Purchases	P 21,388,925.75	
50% Operating Expenses	838,970.81	
Salaries – no w/tax	1,335,591.08	23,563,487.64
Net Income/Audits		24,052,693.14
Tax Due		7,661,861.80
Less Tax Paid/Return		121,761.65
Deficiency Income tax due		7,540,100.15
Add: Increments		
Interest up to 12/31/09		4,088,242.30
Total Deficiency Income Tax		**P 11,628,342.45**

DEFICIENCY VALUE-ADDED TAX
Sec. 106 & 113,NIRC

Taxable Sales per Audit	P 171,204,932.23
Output Tax Due	26,148,342.75
Less: Creditable Input Tax	17, 615,595.34
VAT Payable/Audit	8,532,747.41
Less VAT Payment	257,963.68
Deficiency VAT Due	8,274,783.73
Add: Increments	
Interest up to 12/31/09	4,854,815.61
Total Deficiency VAT DUE	**P 13,129,599.34**

[12] Par. 2.3 of JSF, Docket (Vol. I), pp. 290-291; Exhibit "B".
[13] Exhibit "C".
[14] Exhibit "E"; Exhibits "15", "15-a", "15-b", BIR records, pp. 230-232.

DEFICIENCY EXPANDED WITHHOLDING TAX
Sec. 57, NIRC

Rent Expenses	P 1,620,000.00 * 5%	P 81,000.00
Subcon/Services	1,535,474.15 * 2%	30,709.48
EWT Due		111,709.48
Less: Payments/Remittance		52,049.41
Deficiency EWT Payable		59,660.07
Add: Increments		
Interest up to 12/31/09		35,497.74
Total Deficiency EWT Due		**P 95,157.81**

Subsequently, respondent issued the Formal Letter of Demand and Assessment Notices[15] dated January 14, 2010, assessing petitioner as follows:

"DEFICIENCY INCOME TAX
(Sec. 34 -Sec. 6B, NIRC)

Taxable Income per Return		P 489,205.50
Add: Adjustments per Audit –		
Disallowanced Expenses – unsupported		
Unsupported Purchases	P 21,388,925.75	
50% Operating Expenses	838,970.81	
Salaries – no w/tax	1,335,591.08	23,563,487.64
Adjusted taxable income		P 24,052,693.14
Tax due		P 7,661,861.80
Less: payments/credits		121,761.65
Deficiency Income Tax		P 7,540,100.15
Add: 25% Surcharge (sec. 248)		
20% interest p. a. from ___ to 01/15/2010 (sec. 249)		4,147,009.84
Compromise Penalty (sec. 254 in relation to RMO 19-2007)		
TOTAL AMOUNT DUE & COLLECTIBLE		**P 11,687,109.99**

DEFICIENCY VALUE-ADDED TAX
(pursuant to Sec. 108 & 113, NIRC)

Taxable Sales per Return	P 171,204,932.23
Output tax thereon	P 26,148,342.75
Less: Creditable Input tax	17, 615,595.34
VAT due	P 8,532,747.41
Less: payments	257,963.68
Deficiency VAT Due	P 8,274,783.73
Add: 25% Surcharge (sec. 248)	
20% interest p. a. from ___ to 01/15/2010 (sec. 249)	4,918,829.34
Compromise Penalty (sec. 254 in relation to RMO 19-2007)	
TOTAL AMOUNT DUE & COLLECTIBLE	**P 13,193,613.07**

[15] Exhibits "E-1" to "E-4"; Exhibits "16", "17", "18", "19", "19-a", "19-b", BIR records, pp. 233-238.

DEFICIENCY EXPANDED WITHHOLDING TAX
(pursuant to Sec. 57, NIRC)

Rent Expenses	P 1,620,000.00 * 5%	P 81,000.00
Subcon/Services	1,535,474.15 * 2%	30,709.48
Total EWT Due		P 111,709.48
Less: Payment		52,049.41
Deficiency EWT		P 59,660.07
Add: 25% Surcharge (sec. 248)		
20% interest p. a. from ___ to 01/15/2010 (sec. 249)		35,796.04
Compromise Penalty (sec. 254 in relation to RMO 19-2007)		
Total Deficiency EWT Due		**P 95,456.11**

On April 8, 2011, petitioner received the 1st Notice[16] at 197 M.H. Del Pilar Street, Tinajeros, Malabon City.[17]

Petitioner filed his Annual Income Tax Return for taxable year 2010 on April 13, 2011 at Revenue District Office No. 34.[18]

On May 13, 2011, petitioner filed his Protest Letter with respondent[19].

On July 19, 2011, a copy of the Letter[20] of the BIR dated July 12, 2011 for alleged deficiency income, value-added and expanded withholding taxes for the taxable year 2006 in the amount of Twenty Four Million Nine Hundred Seventy Six Thousand One Hundred Seventy Nine and 17/100 (Php24,976,179.17) was furnished to the office of Atty. Marianne R. Palisoc.[21]

On August 25, 2011, petitioner received the Warrant of Distraint and Levy for the amount of Twenty Four Million Nine Hundred Seventy Six Thousand One Hundred Seventy Nine and 17/100 Pesos (Php24,976,179.17) issued by the Commissioner of Internal Revenue.[22]

[16] Exhibit "D".
[17] Par. 2.4 of JSF, Docket (Vol. I), p. 291.
[18] Exhibits "20", "20-a", and "20-b", BIR records, pp. 277-286.
[19] Exhibit "F".
[20] Exhibit "G"; Exhibit "30, BIR records, p. 295.
[21] Par. 2.5 of JSF, Docket (Vol. I), p. 291.
[22] Par. 2.6 of JSF, Docket (Vol. I), p. 291; Exhibit "H"; Exhibit "22", BIR records, p. 291.

Thus, petitioner filed the instant Petition for Review on September 9, 2011, and incorporated therein a Motion for Suspension of Collection of Tax.

Respondent filed her Answer[23] on October 26, 2011, interposing the following special and affirmative defenses:

> "38. The Honorable Court has no jurisdiction to entertain the instant petition for review as the same was filed out of time. Assessment Notice Nos. 34-2006 for deficiency income tax, value-added tax, and expanded withholding tax in the amounts of P11,687,109.99, P13,193,613.07 and P95,456.11, respectively, was issued on January 14, 2010. Petitioner failed to timely protest said assessment, hence, the same had become final, executory and demandable pursuant to Section 228 of the Tax Code of 1997.
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> 39. The Preliminary Assessment Notice dated December 21, 2009 (with attached details of discrepancies) and Assessment Notice No. 34-2006 for deficiency income tax, value-added tax and expanded withholding tax and the corresponding demand letter, all dated January 14, 2011, all addressed to petitioner Mr. Kenneth Pundanera, with address at 1881 Pres. Quirino Avenue, Paco, Manila, were sent to petitioner by registered mail on December 21, 2009 under Registry Receipt No. 924618 and on January 14, 2010 under Registry Receipt No. 900164, respectively.
>
> 40. At the time these Preliminary Assessment Notice and Assessment Notice and the corresponding demand letter were sent to petitioner by registered mail, petitioner was still holding business at his registered business address at 1881 Pres. Quirino Avenue, Paco, Manila. In fact, petitioner's registered address indicated in his Annual Income Tax Return (BIR Form 1701) for taxable year 2010 filed on April 13, 2011 is still '**1881 Pres. Quirino Avenue, Paco, Manila**'.
>
> 41. The subject Warrant of Distraint and/or Levy was duly issued and served upon the petitioner.
>
> 42. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity

[23] Docket, (Vol. I), pp. 251-258.

> (*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*).
>
> 43. 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]*)."

On November 23, 2011, petitioner filed his Pre-Trial Brief[24], while Respondent's Pre-Trial Brief[25] was submitted on November 29, 2011.

In its Resolution[26] dated February 13, 2012, the Court prohibited respondent from issuing, executing, enforcing, implementing or otherwise giving effect to any Warrant of Distraint, Levy and Garnishment, and from collecting or attempting to collect on the basis of the subject Assessment Notices in this case, and from doing any and all acts relative thereto, until further orders from the former, subject to petitioner's filing of a bond from a reputable surety company duly accredited by the Supreme Court, in the amount equivalent to one and one-half times of the amount being collected or P37,464,268.76, within ten (10) days from the aforesaid date. However, petitioner failed to file the required surety bond.[27]

On February 24, 2012, petitioner filed his Urgent Ex-Parte Motion for Extension of Time to File Bond[28]. Then, petitioner subsequently submitted his Compliance[29] together with the required surety bond on March 16, 2012. The Court granted the aforementioned ex-parte motion on March 23, 2012;[30] and approved

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[24] Docket (Vol. I), pp. 266-274.
[25] Docket (Vol. I), pp. 275-280
[26] Docket (Vol. I), pp. 346-348.
[27] Records Verification dated February 28, 2012, Docket (Vol. I), p. 349.
[28] Docket (Vol. I), pp. 565-569
[29] Docket (Vol. I), pp. 576-580
[30] Resolution, Docket (Vol. I), p. 609.

the surety bond on April 12, 2012[31]. As such, respondent was enjoined from collecting or attempting to collect on the basis of the subject Assessment Notices in this case, until further orders from the Court.

On April 5, 2013, petitioner manifested that he has discontinued his arrangement with CAP General Insurance Corporation, and submitted a new surety bond furnished by Prudential Guarantee and Assurance, Inc.[32], which was approved by the Court in a Resolution dated May 15, 2013.[33]

During trial, petitioner took the witness stand. He presented other witnesses, namely: Marianne R. Palisoc and Evelyn Maingat. On the other hand, respondent presented her witnesses, namely: Revenue Officer Agatha Kristie G. Eugenio-Buizon, Revenue Officer Antonio G. Hernandez, Ma. Paz Arcilla, Armando C. Macatangay, and Revenue Officer Maricol O. Domingo.

Likewise, the parties presented and formally offered their respective documentary evidence.

Respondent filed her Memorandum[34] on March 5, 2014 while, petitioner failed to submit his Memorandum.[35] As a result, this instant Petition for Review was submitted for decision on March 12, 2014.[36]

However, petitioner moved for the admission of his Memorandum on March 12, 2014;[37] which the Court granted and admitted the Memorandum for the Petitioner on March 17, 2014.[38]

Parties set forth the following issues[39] to be resolved by this Court:

1. Whether or not the assessment and the warrant of distraint and levy are void;

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[31] Resolution, Docket (Vol. I), pp. 620-621.
[32] Manifestation, Docket (Vol. III), pp. 1092-1097.
[33] Docket (Vol. III), p. 1143.
[34] Docket (Vol. III), pp. 1274-1279
[35] Records Verification dated March 7, 2014, Docket (Vol. III), p. 1280.
[36] Resolution, Docket (Vol. III), p. 1281.
[37] Docket (Vol. III), pp. 1282-1287.
[38] Docket (Vol. III), p. 1320.
[39] Par. 3 of JSF, Docket (Vol. I), p. 291.

2. Whether or not the collection of alleged deficiency taxes must be suspended; and

3. Whether or not the BIR's right to issue an assessment for alleged deficiency taxes has already prescribed.

Petitioner contends that the Assessment Notices and the Warrant of Distraint and Levy are void on the ground that his right to due process was violated. He alleges that he never received the Preliminary Assessment Notice, Formal Demand Letter and Assessment Notices, informing him of his deficiency taxes for taxable year 2006. He points out that his witness Atty. Marianne R. Palisoc testified that there was no indication or proof of sending of the aforesaid documents, as well as the proof of receipt of the same by petitioner in the respondent's records.

Petitioner also posits that when a taxpayer disputes his/her receipt of the assessments from the BIR, it shall be incumbent upon the latter to adduce evidence which proves otherwise, citing the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[40]

Petitioner further alleges that respondent failed to prove the actual receipt of the Preliminary Assessment Notice and Formal Letter of Demand by petitioner; thus, he was deprived of the opportunity to be heard and right to due process.

Respondent, on the other hand, asserts that the Preliminary Assessment Notice dated December 21, 2009, Assessment Notice No. 34-2006 and Formal Letter of Demand No. 34-3006 both dated January 14, 2010, and the Warrant of Distraint and/or Levy dated August 25, 2011 were validly issued against petitioner. Respondent explains that the PAN and FLD were sent through registered mail to petitioner's registered business address at 1881 Pres. Quirino Avenue, Paco, Manila.

Respondent, likewise, insists that petitioner failed to timely protest the aforesaid assessment, had become final, executory and demandable pursuant to Section 228 of the Tax Code of 1997, as amended. Thus, the Court has no jurisdiction to entertain the instant petition for review.

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[40] G.R. No. 185371, December 8, 2010.

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

> "Sec. 228. *Protesting 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 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.)

In relation thereto is Revenue Regulations No. 12-99, which states that:

> "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 xxx. **The same shall be sent to the taxpayer only by registered mail or by personal delivery.** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Emphasis supplied.*)

The afore-quoted provisions require that the taxpayer must be afforded due process of law in assessing tax liability. A valid assessment is a substantive prerequisite to tax collection. Due process requires that the assessment notice must be properly sent to and actually received by the taxpayer.

Further, when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), 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.[41] (*Emphasis supplied.*)

A void 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.[42]

Also, an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.

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[41] Protector's Services, Inc. vs. Court of Appeals, G.R. No. 118176, April 12, 2000.
[42] Commissioner of Internal Revenue vs. Azucena Reyes, G.R. Nos. 159694 & 163581, January 27, 2006.

It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**.[43] (Emphasis supplied.)

Respondent insists that the Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD) with Assessment Notices were sent through registered mail.

As such, it is peremptory for this Court to settle the factual issue on whether the PAN and FLD and assessment notice were mailed and actually received by petitioner.

Respondent presented the transmittal letters[44] and the following testimonies of respondent's witnesses to prove that the PAN and the FLD were mailed through registered mail to petitioner, to wit:

> "A. The originals of these Final Assessment Notices and Formal Letter of Demand, after they were duly signed by the Regional Director, were transmitted by our Office, in a transmittal letter, to the Administrative Division, BIR Manila for mailing to Mr. Kenneth Pundanera at his registered business address at 1881 President Quirino Avenue, Paco, Manila.
>
> Q9. You mentioned of a transmittal letter. Showing to you this document with an imprint 'FOR MAILING JAN 14, 2010 RUSH' at the lower left portion thereof, please tell us the relation of this document to the transmittal letter you have just mentioned.
>
> A. Sir, this is the same transmittal letter I am referring to earlier."[45]
>
> "Q4. Mr. Witness, in the performance of your duties as Administrative Assisstant III, did you come across any documents, involving taxable year 2006, for mailing to Mr. Kenneth C. Pundanera, the petitioner in CTA Case No. 8333 entitiled 'Kenneth C. Pundanera vs. Commissioner of Internal Revenue'?

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[43] Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999.
[44] Exhibits "26", "26-a", "27" and "27-a".
[45] Exhibit "25".

A. Yes sir. On December 21, 2009, our Office received from the Assessment Division, BIR Manila a transmittal letter with attached preliminary assessment notices of 14 taxpayers including that of petitioner Kenneth C. Pundanera, with registered business address at 1881 President Quirino Avenue, Paco, Manila.

Q5. After your receipt of this transmittal letter with attached preliminary assessment notices, what action did you take, if any?

A. Sir, I sent all said preliminary assessment notices by registered mail. The Preliminary Assessment Notice issued to Mr. Kenneth C. Pundanera was sent under Registry Receipt No. 924618 dated December 21, 2009.

xxx xxx xxx

Q8. Aside from this Preliminary Assessment Notice, would you know if there were other documents/communications involving taxable year 2006 issued to Mr. Kenneth C. Pundanera, with business address at 1881 President Quirino Avenue Paco, Manila which your office received from the Assessment Division for mailing?

A. Yes, Sir. On January 4, 2010, our Office received from the Assessment Division a transmittal letter with attached Assessment Notice No. 34-2006 and Formal Letter of Demand, all dated January 14, 2010, addressed to Mr. Kenneth C. Pundanera, with business address at 1881 President Quirino Avenue, Paco, Manila, for mailing.

xxx xxx xxx

Q10. Showing to you these documents denominated as Assessment Notice No. 34-2006 for deficiency income tax, VAT, EWT and Formal Letter of Demand with Details of Discrepancies, all dated January 14, 2010, and which were pre-marked as **Exhibits '16', '17', '18', '19', '19-a', and '19-b'**, for the respondent. Will you please examine these documents and tell this Honorable Court the relation of these documents to the one you have just mentioned?

A. Sir, these are the Final Assessment Notices and Formal Letter of Demand with Details of Discrepancies I am referring to earlier which we received for mailing and which I sent by registered mail to Mr. Kenneth C. Pundanera, with business address at 1881 President Quirino Avenue, Paco, Manila on January 14, 2010 under Registry Receipt No. 900164."[46]

Based on the foregoing, it was established that the mail matters were properly addressed with postage prepaid and that they were mailed. Accordingly, the PAN and FLD with assessment notices are disputably presumed received by petitioner in the regular course of mail.

Notwithstanding, petitioner has directly denied that he received the PAN and the FLD with the assessment notices.

Petitioner testified through his Judicial Affidavit and during his cross-examination and re-direct examination on February 6, 2012, to wit:

"Q13: Did you receive any other documents from the BIR with respect to your 2006 tax assessment aside from those you just mentioned?

A13: No. I did not receive any other documents from the BIR aside from the Letter for Informal Conference, 1st Notice, and Warrant of Distraint and Levy."[47]

"ATTY. LORENZO

Q Mr. Witness, in your answer to Question No. 13, you stated that you never received, you did not receive any document from the BIR, is that right, with regard to this case?

MR. PUNDANERA

A Apart from the three, the three that I mentioned in my Affidavit.

[46] Exhibit "28".
[47] Exhibit "I".

ATTY. LORENZO
Except for the letter for informal conference, first notice and Warrant of Distraint.

xxx xxx xxx

"ATTY. BRITANICO

xxx xxx xxx

Q Can you please tell the Honorable Court whether or not you in fact received the copy of these assessment notices?

MR. PUNDANERA
A I did not receive a copy of these notices. This is the first time it's being shown to me.

xxx xxx xxx

Q With regard to the other assessment notices such as preliminary assessment notice dated December 21, 2009 and the formal letter demand dated January 14, 2010, can you please tell the Honorable Court whether you have received any of these notices from the BIR?

MR. PUNDANERA
A Same. I did not receive any of these notices."[48]

With such denial, the burden of proof shifts to respondent to prove that the aforesaid documents were actually received by petitioner.

Perusal of the records shows that respondent failed to present any evidence that would show that petitioner, indeed, actually received the PAN, FLD and the assessment notices. The failure of the respondent to prove receipt of the same by petitioner leads to the conclusion that no assessment was issued.[49]

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[48] TSN dated February 6, 2012.
[49] Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR, CTA Case 4885, August 22, 1996.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[50]

WHEREFORE, in view of the foregoing, this instant Petition for Review is **GRANTED**. Accordingly, the subject Preliminary Assessment Notice dated December 21, 2009, Formal Letter of Demand No. 34-2006 dated 14 January 2010 and Assessment Notices No. 34-2006 for Income, VAT, EWT, all dated January 14, 2010 are declared **NULL and VOID**, and the Warrant of Distraint and/or Levy for the amount of Twenty Four Million Nine Hundred Seventy Six Thousand One Hundred Seventy Nine and 17/100 (Php24,976,179.17) is **CANCELLED and deemed WITHDRAWN**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[50] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice