REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

VENTIS MARITIME CORPORATION, Petitioner,	CTA CASE NO. 8737
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 28 2017 10:25 a.m.

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DECISION

FABON-VICTORINO, J.:

In its Petition for Review filed on November 25, 2013, petitioner Ventis Maritime Corporation seeks to nullify and cancel the Final Decision dated October 21, 2013 issued by respondent Commissioner of Internal Revenue (CIR) for deficiency Income Tax (IT), Value-Added Tax (VAT) and Final Withholding Tax (FWT) for calendar year (CY) 2007, in the aggregate amount of ₱2,713,638.76, on ground of prescription, as well as to lift the Warrant of Distraint and/or Levy (WDL) issued against it on July 25,2013.

THE FACTS

Petitioner Ventis Maritime Corporation is a domestic corporation with principal office address at "K" Line Building, Coral Way Drive, Central Business Park I, Island A, Pasay City. It is registered with the Bureau of Internal Revenue

(BIR) with Certificate of Registration No. OCN9RC000404746[1].

On the other hand, respondent CIR is authorized to collect internal revenue taxes, grant refunds, issue and abate tax assessments, and conduct investigation to determine the correctness of the taxes paid under the National Internal Revenue Code (NIRC). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

For CY 2007, petitioner filed its Annual Income Tax Return (ITR) and Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) on the following dates[2]:

MONTHLY RETURNS	DATE FILED
January 2007	February 6, 2007
February 2007	March 7, 2007
March 2007	April 3, 2007
April 2007	May 7, 2007
May 2007	June 6, 2007
June 2007	July 9, 2007
July 2007	August 8, 2007
August 2007	September 6, 2007
September 2007	October 9, 2007
October 2007	November 7, 2007
November 2007	December 7, 2007
December 2007	January 15, 2008

On January 21, 2009, respondent issued Letter of Authority (LOA) No. 2008-00000201[3] authorizing the examination of petitioner's books of accounts and other

[1] Exhibit "P-2-a".
[2] Par. 2, Facts Admitted, Joint Stipulation of Facts (JSF), docket, p. 91.
[3] Exhibit "P-15" and Exhibit "R-1".

accounting records for all internal revenue taxes for CY 2007.

Subsequently, respondent issued Requests for Presentation of Records which petitioner complied[4].

After the examination of the documents, petitioner was found to have deficiency taxes as contained in the Post Reporting Notice issued by respondent on October 21, 2010[5]. Consequently, on January 5, 2011, respondent issued against petitioner a Preliminary Assessment Notice (PAN) with Details of Discrepancies for deficiency IT, VAT and FWT for CY 2007 amounting to ₱1,087,217.34, ₱403,921.42 and ₱1,222,500.00, respectively.[6]

On January 14, 2011, respondent sent to petitioner a Formal Assessment Notice (FAN)[7] and the Formal Letter of Demand[8] (FLD) with Details of Discrepancies[9], via registered mail with Registry Receipt No. 900735.[10]

On June 6, 2011, respondent, through Revenue District Office (RDO) No. 33 of Revenue Region No. 6, Ermita-Intramuros-Malate-Port Area, issued a Preliminary Collection Letter (PCL).[11] Upon receipt thereof, petitioner requested for copies of the FAN and FLD allegedly sent to it and proof of their mailing.

Acting on the said request, respondent attached to its letter to petitioner dated July 26, 2011[12] photocopies of the PAN, FLD and the FAN.

In its letter dated July 28, 2011[13], petitioner informed respondent that it was the first time it received photocopies of the PAN, FAN, and FLD and named the recipients of the

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[4] Par. 3, Facts Admitted, JSF, docket, p. 91.
[5] Par. 4., *Id.* docket, p. 92.
[6] Exhibits "R-6" to "R-6-c".
[7] Exhibits "R-8" to "R-10".
[8] Exhibits "R-7" to "R-7-a".
[9] Exhibit "R-7-b".
[10] Exhibits "P-16" and Exhibits "R-19-a" to "R-19-b".
[11] Par. 9(m), JSF, docket, p. 92.
[12] Exhibit "P-5".
[13] Exhibit "P-6".

cash dividends it declared in 2007. In the same letter, petitioner raised its defense of prescription.

On January 26, 2012, respondent, through RDO No. 51 of RR 8-Pasay City, issued another PCL[14], which petitioner received on February 2, 2012.

On February 29, 2012, respondent issued a Final Notice Before Seizure[15].

On March 1, 2012[16] petitioner protested the PCL and reiterated its defense of prescription. The said protest was however denied by respondent in a letter dated May 15, 2012[17] giving petitioner ten (10) days to pay its tax liabilities.

In its letter dated August 28, 2012[18], petitioner refuted respondent's declaration that the assessment has not prescribed.

On July 25, 2013, respondent served upon petitioner a Warrant of Distraint and/or Levy (WDL)[19] which petitioner protested in its letter dated July 26, 2013[20].

On October 24, 2013, petitioner received respondent's letter dated October 21, 2013[21], denying its protest against the WDL.

Hence, this Petition for Review filed on November 25, 2013[22].

In his Answer[23] filed on February 6, 2014, respondent maintains that the assailed assessments were issued and

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[14] Exhibit "P-7".
[15] Exhibit "P-9".
[16] Exhibit "P-8".
[17] Exhibit "P-10".
[18] Exhibit "P-11".
[19] Exhibit "P-12".
[20] Exhibits "P-13" to "P-13-b".
[21] Exhibit "P-14".
[22] Docket, pp. 6-20.
[23] Docket, pp. 50-54.

mailed to petitioner within the three (3)-year prescriptive period. Petitioner however failed to timely file a protest which rendered the said assessment final, executory and demandable pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is also untrue, says respondent, that the subject assessments have no factual or legal basis as they were the result of the audit investigations conducted by the BIR. Thus, the burden of proof as to their invalidity rests upon the shoulder of petitioner in view of the well-established principle that tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise[24]. Besides, the presumption is in favor of the correctness of the assessment made by the Commissioner of Internal Revenue and that the taxpayer must prove the contrary.[25]

After the Pre-Trial Conference[26], petitioner presented its Finance Manager since September 2012, Narnita M. Emerenciana.

Witness **Narnita M. Emerenciana**[27] declared that as part of her job, she prepares Financial Reports for petitioner, coordinates with its internal and external auditors and handles tax audits conducted by the BIR.

She learned about the present case from the various official communications between petitioner's official representatives and the BIR starting from the time the LOA was issued up to the issuance of the FAN.

On July 25, 2013, petitioner received a WDL[28] which it protested through a letter dated July 26, 2013[29] on the ground of non-receipt of the FAN allegedly mailed on

[24] Commissioner of Internal Revenue v. Construction Resources of Asia, Inc., 114 SCRA 671.
[25] Commissioner of Internal Revenue v. Antonio Tuason, Inc., 173 SCRA 397.; Commissioner of Internal Revenue v. Construction Resources of Asia, Inc. 145 SCRA 671.
[26]Docket, pp. 97-104.
[27] See Amended Judicial Affidavit of Narnita M. Emerenciana, Exhibits "P-18 to P-18-f".
[28] Exhibits "P-13" to "P-13-b".
[29] Exhibits "P13" to "P-13-b".

January 14, 2011 by the BIR to its previous office address at "K" Line Building, 1631 San Marcelino St., Malate, Manila[30], despite previous notice of its change of address and issuance of a new Certificate of Registration reflecting such change.

Respondent denied petitioner's protest in a letter dated October 21, 2013[31] and required it to pay the deficiency taxes within 10 days from receipt thereof.

Per record, respondent based petitioner's 2007 deficiency IT assessment on alleged undeclared income of ₱29,680.00, unaccounted salaries and wages of ₱901,323.48 and unaccounted expenses of ₱1,036,043.58; while the deficiency VAT assessment was based on alleged unaccounted salaries and wages of ₱901,323.48 and unaccounted expenses of ₱1,036,043.58 that should be added back to its taxable sales per returns. Finally, the deficiency FWT assessment was due to its alleged failure to subject the ₱6,500,000.00 cash dividend to 10% FWT.

However, petitioner was unable to fully protest the subject assessments as it was not properly furnished with a copy of the preliminary findings before the FAN was issued and the formal assessments dated January 14, 2011, which were all returned to sender. Had petitioner been duly notified of such assessments, it could have fully defended and substantiated its position.

Further, there was no legal basis for the deficiency FWT assessments since the Tax Code explicitly provides that dividends received by a domestic corporation from another domestic corporation shall not be subject to tax.

After the testimony of its lone witness, petitioner rested its case.[32]

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[30] Exhibit "P-16".
[31] Exhibit "P-14".
[32] Resolution dated October 21, 2014, docket, pp. 183-184.

For his part, respondent presented Armando C. Macatangay, Gil C. Quintos and Ronald T. Quinoñes, as witnesses.

Witness **Armando C. Macatangay** declared[33] that as an Administrative Assistant III at the Administrative Division of BIR Revenue Region No. 6-Manila, he is tasked to personally mail BIR assessment notices, letters and other correspondences.

He knows the present case as he personally mailed to petitioner the PAN[34] and FAN[35] with FLD[36] issued by the BIR for CY 2007, per request in the Transmittal Slips[37] prepared by the Assessment Division of the BIR Revenue Region No. 6-Manila. He sent the PAN on January 6, 2011 through registered mail under Registry Receipt No. 900023[38], and the FAN with the Formal Letter of Demand under Registry Receipt No. 900735[39]. He deposited the copies of the said PAN at the Manila Central Post Office, in a sealed envelope, with petitioner's registered address and instructions to the postmaster to return the mail to the sender after ten days if undelivered.

Revenue Officer (RO) assigned at Revenue District No. 32, RR No. 6, **Gil C. Quintos** testified[40] that he continued the audit of petitioner's books of account and other accounting records for all its internal revenue taxes for CY 2007 pursuant to LOA No. 2008-00000201 dated January 21, 2009[41] issued by the Regional Director of RR No. 6-Manila. After audit, he found petitioner liable for deficiency IT, EWT and VAT in the respective amounts of ₱1,003,943.09, ₱214,732.45 and ₱3,498,320.89. He informed petitioner about his finding in the Notice of Informal Conference with Details of Computation[42].

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[33] Exhibits "R-23" and "R-23-a".
[34] Exhibits "R-6" to "R-6-c".
[35] Exhibits "R-8" to "R-10".
[36] Exhibits "R-7" to "R-7-b".
[37] Exhibits "R-19-a" and "R-22".
[38] Exhibit "R-22-a".
[39] Exhibit "R-19-b".
[40] Exhibits "R-27" and "R-27-a".
[41] Exhibit "R-1".
[42] Exhibit "R-2".

Thereafter, he prepared the Revenue Officer's Audit Report[43] reflecting the results of his audit then forwarded petitioner's tax docket to the Assessment Division with recommendation to issue assessment notices as contained in his Memorandum Report of Investigation[44]. The Assessment Division however issued a Memorandum[45] to revise the initial result of investigation and to issue a revised Post Reporting Notice. Accordingly, he revised the result of his investigation based on the observation of the Assessment Division and issued a Post Reporting Notice[46] informing petitioner of its deficiency tax liabilities of ₱1,054,774.91 for Income Tax, ₱1,202,198.63 for EWT, ₱396,322.95 for VAT and ₱9,358,697.98 for Improperly Accumulated Earnings Tax. The said Post Reporting Notice was sent to and received by petitioner.

He added that per record, the PAN with Details of Discrepancies[47] indicating petitioner's deficiency tax liabilities for CY 2007, the FAN with Details of Discrepancies and FLD[48] were served to petitioner.

Witness Quintos added that he was among the original examiners named in the LOA. Later, a Memorandum of Assignment was issued authorizing him to conduct a reinvestigation, however, he could no longer locate it. He submitted all his reports on the case to his Group Supervisor together with the PAN and the FAN. His reports pertaining to his investigation were all approved by the Regional Director of Manila.

Revenue Officer **Ronald T. Quiñones** of the Assessment Division declared[49] that he was assigned to review petitioner's assessment case for CY 2007 per the Assignment Slip[50] issued for the purpose. After he reviewed and evaluated the record of the case including the initial assessment by RO Gil C. Quintos, he found petitioner liable for deficiency IT in the amount of ₱1,087,217.34, deficiency

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[43] Exhibits "R-24" to "R-26".
[44] Exhibit "R-3".
[45] Exhibit "R-4".
[46] Exhibits "R-5" to "R-5-b".
[47] Exhibits "R-6" to "R-6-c".
[48] Exhibits "R-7" to "R-10".
[49] Exhibits "R-31" and "R-31-a".
[50] Exhibit "R-28".

VAT in the amount of ₱403,921.42 and deficiency FWT in the amount of ₱1,222,500.00, as reflected in the Revenue Officer's Audit Report on EWT and FWT[51].

In connection with his review, he prepared and issued the PAN with Details of Discrepancies, the FAN with Details of Discrepancies and the FLD to petitioner.

Respondent rested after the admission of his evidence.[52]

The case was deemed submitted for decision on March 29, 2016[53] after the filing of Petitioner's Memorandum[54] on August 14, 2015 and that of respondent[55] on March 2, 2016.

THE ISSUES

The parties submitted the following issues[56] for the determination of the Court, to wit:

1. Whether this Honorable Court has jurisdiction to entertain the instant Petition for Review;

2. Whether the Deficiency Tax Assessments under Assessment Notice Nos. 33-07-IT-1291; 33-07-VAT-1292 and 33-07-WF-1293 have become final and demandable;

3. Whether non-receipt of a Formal Assessment Notice by petitioner is immaterial and irrelevant as long as the Assessment Notice was issued and sent within the prescriptive period as mandated by law; and

4. Whether the issuance of a Preliminary Assessment Notice and receipt thereof by Petitioner is mandatory prior to the issuance of the Formal Assessment Notice.

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[51] Exhibits "R-29" to "R-30".
[52] Resolution dated June 30, 2015, docket, pp. 290-291; Resolution dated January 27, 2016, docket, pp.339-340.
[53] Resolution dated March 29, 2016, docket, p. 352.
[54] Docket, pp. 257-306.
[55] Docket, pp. 341-350.
[56] Issues, Joint Stipulation of Facts and Issues, docket, p. 92.

Petitioner's arguments:

Petitioner denies receipt of the FAN issued by respondent claiming that it was sent to its former business address notwithstanding previous information of its transfer of office for which it was issued a Certificate of Registration reflecting such change. In view thereof, the assessments have prescribed.

Petitioner further claims that no PAN was issued by respondent as required Section 228 of the NIRC of 1997, as amended.

Even assuming *arguendo* that it actually received the FAN, petitioner maintains that it is still not liable for deficiency IT given that it was able to substantiate the expenses it claimed as deductions. Likewise there can be no non-withholding of final tax on dividends as the dividends declared are intercorporate payable to a domestic corporation which are not subject to tax.

Respondent's arguments:

Respondent questions the Court's jurisdiction over the present action saying that the subject assessments were mailed within the three (3)-year prescriptive period provided by law. Despite receipt however, petitioner failed to timely protest the said assessments rendering them final, executory and demandable, thereby depriving the Court the competence to petition.

Moreover, it is untrue that the subject assessments have no factual or legal basis as they were based on audit investigations conducted by the BIR.

THE COURT'S RULING

The primordial issue in the present action is the timeliness of its filing. Section 228 of the NIRC of 1997, as amended[57], provides that a taxpayer adversely affected by the decision of the CIR may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the adverse decision; otherwise, the same shall become final, executory and demandable.

It is undisputed that petitioner received on October 24, 2013 respondent's letter dated October 21, 2013[58] denying its protest against the Warrant of Distraint and/or Levy and demanding payment of deficiency assessments within ten (10) days from notice, otherwise respondent shall enforce collection. This letter of October 21, 2013 is the final decision of respondent appealable to the Court.

Counting from date of receipt, *viz*, October 24, 2013, petitioner had thirty days to appeal respondent's final decision. Hence, the present Petition for Review was seasonably filed on November 25, 2013, given that the thirtieth (30th) day which was November 23, 2013, fell on a Saturday negating respondent's contention that the assessment became final, executory and demandable. In other words, the Court has jurisdiction to entertain the present Petition for Review.

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

xxxx.

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.

[58] Exhibit "P-14".

Let us now discuss the importance of the issuance and actual receipt by the taxpayer of the PAN and the FAN in the resolution of the other issues raised by the parties.

The right of a taxpayer to be formally informed of the factual and legal bases of the assessment issued against such taxpayer which is part of procedural due process is enshrined in Section 228 of the NIRC of 1997, as amended, and implemented by Section 3 of RR No. 12-99[59], as amended by Section 2 of RR No. 18-2013[60], 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 pre-assessment notice shall not be required in the following cases:
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> xxxx
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> **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**

[59] "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated September 6, 1999
[60] "AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT", dated November 28, 2013

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." (emphases supplied)

"SEC. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

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

3.1.1 Preliminary Assessment Notice (PAN). — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment**. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. . . .

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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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.

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3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — **The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN** 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 assessment shall be void**. . . .

3.1.4 Disputed Assessment. — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof**. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: . . ." (emphases supplied)

The mandate is clear - the taxpayers must be informed in writing of the facts and the law upon which the assessment is made; otherwise, the assessment shall be void. The notices of such assessment, specifically the PAN and the FLD/FAN issued by respondent must be received by the taxpayer as decreed in Section 3 of RR No. 12-99, as amended.

The case of *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*[61], illustrates the significance of actual receipt of such assessment notices by the taxpayer as part of the procedural due process as follows:

"Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer actually receive said notice within the five-year

[61] G.R. No. 155541, January 27, 2004.

> period. It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. **Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received.** In Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, we had occasion to say:
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>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. **To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer**." (emphases supplied)

Evidence show that the PAN dated January 5, 2011, as well as the FAN/FLD dated January 14, 2011, were all sent through registered mail, at petitioner's former address at 1631 K Line Building, San Marcelino Street, Malate, Manila. It was also established through a Certification from the Records Unit of the Office of the Postmaster, Central Post Office[62], that the said PAN, FAN and FLD were returned to sender on January 28, 2011, with indication that the "addressee moved out". Nevertheless, petitioner admitted that after receiving the Preliminary Collection letter dated June 6, 2011, it sent respondent a request for copies of the alleged FAN allegedly sent through mail, as well as proof thereof. Acting on the said letter request, respondent sent and petitioner received on July 28, 2016 a Letter dated July 26, 2011[63], together with the photocopies of the PAN, FAN and FLD. Clearly, there was actual receipt of the subject assessments.

It must however be noted that petitioner received the photocopies of the PAN, FAN and FLD only upon request on the same day, *i.e.*, July 28, 2011, a clear violation of Section 228 of the NIRC of 1997 and RR No. 12-99, as amended by Section 2 of RR No. 18-2013, which gives the taxpayer a

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[62] Exhibit "P-17".
[63] Exhibit "P-5".

period of fifteen (15) days from receipt of the PAN, within which to respond. Unarguably, the right of the taxpayer to respond to the PAN is also an important part of the due process requirement in the issuance of a deficiency tax assessment which respondent wantonly disregarded. Procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer, such as petitioner in the present case, an opportunity to respond thereto.

As held by the Supreme Court in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[64], the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process, thus:

> "From the provision quoted above, it is clear that the sending of a PAN to 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 CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its 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, the assessment made by the CIR is void."

In the recent case of *Commissioner of Internal Revenue v. Apex Chemical Corporation*[65], the Court *En Banc* ruled that the 15-day period afforded to a taxpayer to protest a PAN is an important part of the due process requirement in

[64] G.R. No. 185371, December 8, 2010.
[65] CTA EB Nos. 1382 and 1387, October 14, 2016.

the issuance of a deficiency tax assessment. Respondent's infringement of this right is fatal on his part.

WHEREFORE, the Petition for Review filed by Ventis Maritime Corporation on November 25, 2013, is hereby **GRANTED**. Accordingly, the Final Decision dated October 21, 2013 issued by respondent Commissioner of Internal Revenue assessing petitioner for deficiency Income Tax, Value-Added Tax and Final Withholding Tax for calendar year 2007, in the aggregate amount of ₱2,713,638.76, and the Warrant of Distraint and/or Levy, are hereby **CANCELLED** and deemed **WITHDRAWN** for being **VOID**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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