**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SPECIAL FIRST DIVISION**

**CTA CASE NO. 9850**

**BARRIO FIESTA MANUFACTURING CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

# NOTICE OF DECISION

**To:**

**OFFICE OF THE SOLICITOR GENERAL**
134 Amorsolo St., Legazpi Village
Makati City

**ATTY. AYLEEN B. ALMIRA**
Bureau of Internal Revenue-Revenue Region No. 5
Legal Division, 9th Floor, BIR Executive Building
No. 140 Bo. Kalaanan, Brgy. 86
M. Concepcion St., Caloocan City

**DU-BALADAD & ASSOCIATES**
20th Floor, Chatham House, Rufino cor. Valero Streets
Salcedo Village, Makati City

***GREETINGS:***

You are hereby notified by these presents that on **February 20, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 22, 2024.**

**Atty. Maria Johoanna F. Chan-Te**
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**SPECIAL FIRST DIVISION**

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|---|---|
| **BARRIO FIESTA MANUFACTURING CORPORATION,** *Petitioner,* | **CTA Case No. 9850** |
| | Members: |
| | **DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.* |
| - versus - | |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: FEB 20 2024, 3:00PM |

x-----------------------------------------------------------x

**DECISION**

**REYES-FAJARDO, *J.*:**

In this Petition for Review dated June 6, 2018,[1] Barrio Fiesta Manufacturing Corporation seeks for cancellation and withdrawal of the Bureau of Internal Revenue (BIR)'s Final Notice Before Seizure (FNBS), anchored on the deficiency Value-Added Tax (VAT) assessment and compromise penalty covering the 1st and 2nd Quarters of Taxable Year (TY) 2016, in the total amount of Eight Million Eighty-One Thousand Nine Hundred Twenty-Nine and 51/100 Pesos (₱8,081,929.51), inclusive of interest.[2]

**FACTS**

Petitioner Barrio Fiesta Manufacturing, Inc. is a corporation duly registered under the laws of the Philippines, with address at 17 F. Lazaro Street, West Camunay, Valenzuela City, Metro Manila.[3] It is

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1 Docket (Vol. I), pp. 10-28.

2 See Nature of the Petition, Petition for Review dated June 6, 2018. *Id.* at p. 10.

3 Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 326.

represented herein by its counsel, Du-Baladad & Associates with office address at the 20th Floor, Chatham House, Rufino, corner Valero Streets, Salcedo Village, Makati City, where it may be served with court notices and processes.[4]

Respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office. He may be served with summons, notices, and other court processes at his office at the BIR National Office Building, Diliman, Quezon City.[5]

On June 2, 2017, petitioner received[6] a Letter of Authority (LOA) dated May 29, 2017, issued by Regional Director Myrna S. Leonida, authorizing Revenue Officer Honeylette Claire Bobadilla (RO Bobadilla) and Group Supervisor Rory Jorge Soriano (GS Soriano) to examine petitioner's books of account and other accounting record for VAT, covering the periods January 1, 2016 to June 30, 2016.[7]

On December 14, 2017, petitioner received[8] the Preliminary Assessment Notice (PAN) with Details of Discrepancy dated December 13, 2017, containing the proposed deficiency VAT assessment, and compromise penalty against it, for the periods January 1, 2016 to June 30, 2016, in the total amount of ₱7,983,120.27.[9]

On December 29, 2017, petitioner filed its reply to the PAN, through its letter of even date.[10]

On January 25, 2018, respondent issued a Formal Letter of Demand,[11] Final Assessment Notices for VAT[12] and Compromise Penalty (FLD/FAN),[13] assessing petitioner for deficiency VAT and

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4 Par. 2, Admitted Facts, JSFI. *Ibid.*
5 Par. 3, Admitted Facts, JSFI. *Id.* at pp. 326-327.
6 Par. 8, Petition for Review dated June 6, 2018. *Id.* at p. 12.
7 Exhibit "R-1." BIR Records, p. 5.
8 Par. 9, Petition for Review dated June 6, 2018. *Id.* at p. 12.
9 Exhibit "R-4." BIR Records, pp. 722-727.
10 Exhibit "P-5." Docket (Vol. I), pp. 643-647.
11 Exhibit "R-7." BIR Records, pp. 731-735.
12 Exhibit "R-6." *Id.* at p. 736.
13 Exhibit "R-8." *Id.* at p. 730.

compromise penalty covering January 1, 2016 to June 30, 2016, in the total sum of ₱8,081,929.51.[14]

On May 16, 2018, petitioner received[15] the BIR's Preliminary Collection Letter (PCL) dated May 10, 2018, demanding payment of the deficiency VAT, compromise penalty, and interest.[16]

On June 4, 2018, petitioner received a Final Notice Before Seizure (FNBS), personally served by the BIR. The following day, petitioner received the same FNBS served by the BIR through registered mail.[17]

On June 6, 2018, petitioner filed its Petition for Review of even date, docketed as CTA Case No. 9850, initially raffled before the Third Division of the Court.[18]

On August 3, 2018, respondent filed his Answer with Special and Affirmative Defenses.[19]

Through Order dated September 25, 2018, this case was transferred from the Third Division, to the First Division of the Court.[20]

On October 10, 2019, a Pre-Trial Conference was held, whereby the parties: (1) agreed to submit a Joint Stipulation of Facts and Issues, containing their admissions or stipulations, along with their respective documentary and testimonial evidence; and (2) defined the issue to be resolved in this case. Additionally, we set the hearing dates for the presentation of the parties' respective evidence, along with dates for commissioner's hearings, for the marking of the parties' respective exhibits.[21]

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[14] The deficiency VAT amounted to ₱8,031,929.51, while the compromise penalty amounted to ₱50,000.00.
[15] Par. 5, Admitted Fact, JSFI. Docket (Vol. I), p. 327.
[16] Exhibit "P-6." Docket (Vol. I), p. 648.
[17] Exhibit "P-7." *Id.* at pp. 650-651.
[18] *Supra* note 1.
[19] Docket (Vol. I), 64-76.
[20] *Id.* at p. 105.
[21] Order dated October 10, 2019. *Id.* at pp. 320-321.

On October 25, 2019, the parties filed their Joint Stipulation of Facts and Issues.[22] On the basis thereof, we issued a Pre-Trial Order on December 19, 2019.[23]

Trial ensued.

Petitioner presented Liezel Bilazon[24] as its witness.

On March 24, 2021, petitioner filed through registered mail, its Formal Offer of Evidence (with Motion to Set Additional Commissioner's Hearings),[25] *sans* respondent's comment.

By Resolution dated March 20, 2022, the pieces of evidence offered by petitioner were admitted, save for Exhibit "P-39." Further, we noted that "[w]hile Exhibit **'P-3'** was offered as 'Preliminary Assessment Notice ('PAN') No. 8636 with Details of Discrepancies dated December 13, 2017 and **received by Petitioner on December 14, 2017**,' the document marked does not indicate petitioner's date of receipt," among others.[26]

On May 13, 2022, petitioner filed its Motion for Reconsideration (with Motion to Set Additional Commissioner's Hearing), praying that: (1) the PAN marked as Exhibit "P-3," be substituted with the PAN bearing its date of receipt, per BIR Records; and (2) a commissioner's hearing for comparison of the PAN per petitioner's copy, and the PAN per BIR Records.[27] Accordingly, a commissioner's hearing was set for said purpose.[28]

On August 16, 2022, petitioner filed its Motion for Leave to File Supplemental Formal Offer of Evidence (with Attached Supplemental Formal Offer of Evidence dated August 15, 2022), *sans* respondent's comment, praying that the newly marked Exhibit "P-3,"

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22 *Id.* at pp. 326-332.
23 *Id.* at pp. 362-371.
24 Judicial Affidavit of Liezel V. Bilazon dated February 6, 2020, Exhibits "P-108" and "P-108-a," *id.* at pp. 382-407. Identified during the hearing held on February 9, 2021, see Order of even date, *id.* at pp. 578-579.
25 *Id.* at pp. 606-621. Petitioner's Motion to Set Additional Commissioner's Hearing was granted, through the Resolution dated June 1, 2021.
26 Docket (Vol. II), pp. 754-756.
27 *Id.* at pp. 758-763.
28 See Resolution dated July 20, 2022. *Id.* at pp. 779-780.

*i.e.*, the PAN bearing its date of acceptance, per BIR Records, be admitted as its evidence.[29]

Through Resolution dated October 12, 2022, the newly marked Exhibit "P-3," *i.e.*, the PAN bearing petitioner's date of receipt, per BIR Records, was admitted as petitioner's evidence.[30]

Respondent presented[31] RO Bobadilla[32] as his witness.

On October 20, 2022, respondent filed his Formal Offer of Evidence,[33] to which petitioner its comment[34] on October 28, 2022.

Under Resolution dated December 22, 2022, the pieces of evidence offered by respondent were admitted except for Exhibits "R-12," "R-12-1," and "R-13," for failure of his witness to identify said documents.[35]

Through Minute Resolution dated February 21, 2023,[36] this case was submitted for decision in view of the filing of respondent's Memorandum on February 2, 2023,[37] as well as petitioner's Memorandum, filed through registered mail[38] and electronic mail[39] on February 6 and 8, 2023, respectively.

## ISSUE

Is petitioner liable for deficiency VAT for the 1st and 2nd Quarters of 2016, in the aggregate amount of ₱8,081,929.51, plus surcharge, deficiency and delinquency interest, as provided for in the 1997 NIRC, as amended?[40]

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29 *Id.* at pp. 785-805.
30 *Id.* at pp. 811-812.
31 Order dated October 18, 2022. *Id.* at pp. 814-B to 814-C.
32 Judicial Affidavit of Honeylette Claire P. Bobadilla dated September 28, 2018. Exhibits "R-15" and "R-15-a." Docket (Vol. I), pp. 140-149.
33 *Id.* at pp. 815-820.
34 *Id.* at pp. 821-827.
35 *Id.* at pp. 830-832.
36 Docket (Vol. II), unpaged.
37 *Id.* at pp. 835-847.
38 *Id.* at pp. 891-932.
39 *Id.* at pp. 848-890.
40 See Issue, JSFI. Docket (Vol. I), p. 363.

## ARGUMENTS

Petitioner maintains that it did not receive the FLD/FAN allegedly mailed by the BIR. For failure of respondent to establish actual receipt thereof by petitioner of its duly authorized representatives, it was not able to ventilate its protestations thereto, violative of its right to due process.

Petitioner, too, asserts that it is not liable for the alleged deficiency VAT assessment, and compromise penalty for the periods January 1, 2016 to June 30, 2016, slapped by respondent. The reasons are:

> *First.* The undeclared sales found by the BIR, after comparison of its summary list of sales and source documents, as against the BIR's Third-Party Information (TPI), lacks factual basis because the TPI are unverified by its sources.
>
> *Second.* The undeclared purchases equated by the BIR to undeclared sales is without merit, because under Section 105 of the 1997 National Internal Revenue Code (NIRC), as amended, VAT is imposed on, among others, sales, and *not* purchases.
>
> *Third.* The unsupported zero-rated sales amounting to ₱43,099,513.67, imputed by the BIR against it should be rejected as said sales were duly supported by sales invoices, bills of lading, Certificates of VAT exemption, along with proof of payment foreign currency, duly accounted for, under *Bangko Sentral ng Pilipinas'* rules and regulations.
>
> *Fourth.* The disallowed input VAT amounting to ₱812,093.85 are as well supported by VAT invoices and official receipts, compliant with the invoicing requirements enshrined in Section 113 of the NIRC, as amended.

Through these premises, petitioner concludes that it is not liable for respondent's deficiency VAT and compromise penalty, covering the periods January 1, 2016 to June 30, 2016.

On the other hand, [41] respondent ripostes that petitioner admitted that it received the LOA and PAN. The LOA and PAN were both received by a certain Lee Carreon. On that account, petitioner

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41 Answer with Special and Affirmative Defenses. *Supra* note 19.

may *not* make a convenient denial that it did *not* receive the FLD/FAN also received by the same person; hence, petitioner received the FLD/FAN personally served upon it by the BIR, through Lee Carreon.

Given that the FLD/FAN was received by petitioner's authorized representative Lee Carreon on January 26, 2018, petitioner had thirty (30) days therefrom, or until February 27, 2018 to file an administrative protest thereto; yet, it failed. Thus, the FLD/FAN attained incontestability. Accordingly, the Court lacks jurisdiction over this case.

Assuming, the Court has jurisdiction, respondent nonetheless insists that the FLD/FAN he issued against petitioner covering periods January 1, 2016 to June 30, 2016 is valid for being a product of a valid examination and audit.

For these reasons, respondent declares that his deficiency VAT assessment, and compromise penalty for the periods January 1, 2016 to June 30, 2016 must be sustained.

## RULING

The Petition lacks merit.

Foremost, our jurisdiction in Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[42] as amended by RA No. 9282 is not limited to respondent's decision on disputed assessment. Said provisions, too, endow us with jurisdiction over respondent's action over other matters arising from the NIRC, as amended.[43] Additionally, an aggrieved party must appeal such action to the Court, within thirty (30) days from receipt thereof. These provisions respectively read:

> Sec. 7. Jurisdiction. - The CTA shall exercise:

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42 An Act Creating the Court of Tax Appeals.

43 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

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** or other laws administered by the Bureau of Internal Revenue;

...

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....

...[44]

Among the matters detailed in Section 2 of the NIRC, as amended, is the BIR's authority to collect all national internal revenue taxes, fees, and charges.[45]

Pertinently, a court's jurisdiction over the subject matter of a particular action is determined by petitioner's allegations in the Petition for Review and the principal relief it seeks in the light of the law that apportions the jurisdiction of courts,[46] irrespective of

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44 Boldfacing supplied.

45 SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... See *Commissioner of Internal Revenue v. Bank of the Philippines Islands,* G.R. No. 227049, September 16, 2020. (Boldfacing supplied)

46 See *Montero v. Montero,* G.R. No. 217755, September 18, 2019.

whether or not petitioner is entitled to recover upon all or some of the claims asserted therein.[47]

As alleged in its Petition for Review, on June 4 and 5, 2018, petitioner received the FNBS, respectively served by the BIR, through personal service and registered mail.[48] Counting thirty (30) days therefrom, petitioner had, at most, until July 5, 2018 to seek judicial redress. Precisely, the Petition for Review dated June 6, 2018, and filed by petitioner on even date,[49] endowed us with jurisdiction over CTA Case No. 9850.

Next, the merits.

Section 228 of the NIRC, as amended, provides in part:

> Section 228. *Protesting of Assessment.* — ...
>
> ...
>
> 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.**
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[50]

As presently formulated, when a final assessment was received by a taxpayer, the latter may file a valid administrative protest

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47 See *Palacat v. Heirs of Sas,* G.R. No. 237178, December 2, 2020.

48 Paragraph 12, Petition for Review dated June 6, 2018. Docket (Vol. I), p. 12.

49 *Supra* note 1.

50 Boldfacing supplied.

thereto, within thirty (30) days from receipt thereof. Failure to do so would render said final assessment final and executory.[51]

Petitioner maintains that it did not receive the FLD/FAN allegedly served by the BIR. Respondent says otherwise, insisting that the FLD/FAN was served upon petitioner, through its authorized representative Lee Carreon.

We find for respondent.

*Ei incumbit probatio qui dicit, non que negat.* He [or she] who asserts, not he [or she] who denies, must prove,[52] since, by the nature of things, he [or she] who denies a fact cannot produce any proof of it.[53] Since petitioner repudiates receipt of the BIR's FLD/FAN, respondent is burdened to prove actual receipt thereof by petitioner or his duly authorized representatives. Respondent satisfactorily discharged the *onus* laden upon him.

Allow us to elaborate.

Petitioner acknowledged that on June 2, 2017, it received the LOA dated May 29, 2017.[54] Such LOA was received by Reiza Lee Carreon on June 2, 2017, containing her signature.[55]

Like the LOA, petitioner further admitted that it received the PAN on December 14, 2017.[56] It also sought,[57] and we admitted,[58] the

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51 The pertinent portion of Section 3.1.4, RR No. 18-2013 provides: "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. ...

...

**If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.** No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. (Boldfacing supplied)

52 See *Franco v. People*, G.R. No. 191185, February 1, 2016, citing *People v. Masalihit*, G.R. No. 124329, December 14, 1998.

53 See *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009.

54 *Supra* note 6.

55 Bottom portion of the LOA. Exhibit "R-1." BIR Records, p. 5.

56 *Supra* note 8.

PAN bearing the date of its receipt per BIR Records as its evidence. The PAN bearing such date of receipt per BIR Records reveals that it was received by Lee Carreon bearing her signature, with a date "12/14."[59] Notably, on December 29, 2017, petitioner filed its reply to the PAN, through its letter of even date.[60]

We then sifted through the FAN[61] for VAT, which shows that it was received by Lee Carreon bearing her signature, with a date "1/26." A similar signature, with a date "1/26," was likewise found on the FLD.[62] Conspicuously, Lee Carreon, the person who received the FLD/FAN, was also the individual who received the LOA and PAN; the BIR notices admitted to have been received by petitioner.

In *Factory Automation and Instrumentation Corp. v. Commissioner of Internal Revenue (FAIC)*,[63] therein taxpayer disclaimed receipt of the FLD/FAN served by the BIR, because the person who received the same, *i.e.*, a certain Irene Masula (Masula), lacks the requisite authority to do so. However, it was found that the PAN was received by Masula, and that said taxpayer was able to protest the PAN. In ruling that there was valid service, and receipt by such taxpayer of the FLD/FAN, through Masula, *FAIC* held:

> [The taxpayer] did not contest the authority of Irene Masula to receive the PAN. It cannot now claim that the same person is unauthorized to receive the FAN, when it acted on the PAN that Irene Masula previously received.

Akin to *FAIC*, petitioner did *not* challenge Lee Carreon's authority to receive the PAN. In fact, it was petitioner who moved for the admission of the PAN bearing its date of acceptance per BIR Records. Such PAN was received by Lee Carreon. Petitioner was likewise able to assail said PAN. *Ergo*, petitioner cannot now assert that it did not receive the FLD/FAN, also served by the BIR to Lee Carreon.

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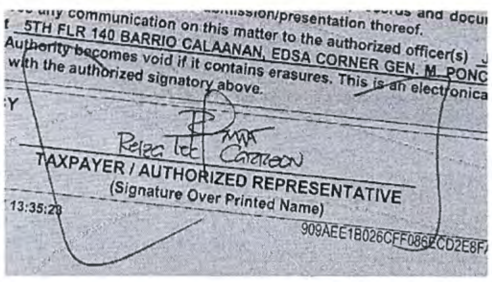
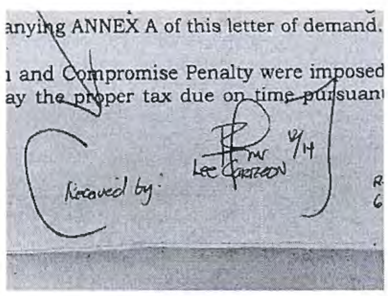
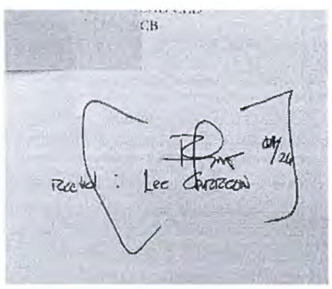
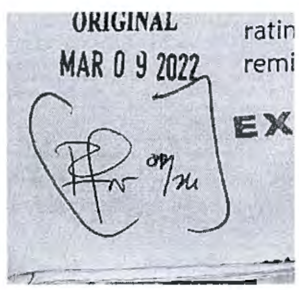
57 Petitioner's Motion for Leave to File Supplemental Formal Offer of Evidence (with Attached Supplemental Formal Offer of Evidence dated August 15, 2022). *Supra* note 29.
58 Resolution dated October 12, 2022. *Supra* note 30.
59 Lower right portion of page 1, PAN. Exhibit "R-4-A." BIR Records, p. 727.
60 Exhibit "P-5." Docket (Vol. I), pp. 643-647.
61 Lower left portion of the FAN for VAT. Exhibit "R-6-A." *Id.* at p. 736.
62 Lower left portion of page 1, FLD. Exhibit "R-7-A." *Id.* at p. 738.
63 G.R. No. 236789, March 27, 2023.

In addition, the notarized Affidavit of Service of Final Assessment Notice and Formal Letter of Demand executed on January 30, 2018[64] divulged that RO Bobadilla and GS Soriano served the FLD/FAN on January 26, 2018, by leaving a copy thereof to Lee Carreon. The details therein are in accord with the notations made by Lee Carreon on the FLD/FAN.

Moreover, the handwriting and signature of Lee Carreon in the LOA, PAN, and FLD/FAN exhibit striking semblance, even to the naked eye. For reference, the handwriting and signature of Lee Carreon in the LOA, PAN, and FLD/FAN are reproduced below:

| LOA[65] | PAN[66] |
|---|---|
|  any communication on this matter to the authorized officer(s)<br>5TH FLR 140 BARRIO CALAANAN, EDSA CORNER GEN. M. PONC<br>Authority becomes void if it contains erasures. This is an electronica<br>with the authorized signatory above.<br>TAXPAYER / AUTHORIZED REPRESENTATIVE<br>(Signature Over Printed Name)<br>13:35:2<br>909AEE1B026CFF086ECD2E8F |  anying ANNEX A of this letter of demand.<br>and Compromise Penalty were imposed<br>ay the proper tax due on time pursuan<br>Received by: Lee Carreon |

| FAN on VAT[67] | FLD[68] |
|---|---|
|  Lee Carreon |  ORIGINAL<br>MAR 0 9 2022<br>ratin<br>remi<br>EX |

Summing it up, the totality of evidence presented gravitate towards two (2) findings, namely: *first,* Lee Carreon is authorized to receive BIR notices on behalf of petitioner; and *second,* petitioner

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64 Exhibits "R-10" and "R-10-A." *Id.* at p. 737.
65 *Supra* note 54.
66 *Supra* note 59.
67 *Supra* note 61.
68 *Supra* note 62.

received the BIR's FLD/FAN, through Lee Carreon on January 26, 2018. Petitioner failed to rebut these findings.

Section 1, Rule 131[69] of the Rules of Court, as amended,[70] embodies, *inter alia*, the principle of burden of evidence. To be precise, when a *prima facie* case was established by a party through satisfactory evidence, the burden of evidence is shifted to the other party to negate the same, via presentation of sufficient countervailing evidence. It is determined by the progress of the trial, and shifts to one party when the other party has produced sufficient evidence to be entitled as a matter of law to a ruling in his [or her] favor.[71] *People v. Mirandilla, Jr. (Mirandilla, Jr.)*[72] explained:

> **Burden of evidence is that logical necessity which rests on a party at any particular time during the trial to create a prima facie case in his [or her] favor or to overthrow one when created against him [or her].** A prima facie case arises when the party having the burden of proof has produced evidence sufficient to support a finding and adjudication for him [or her] of the issue in litigation.[73]

On top of *Mirandilla, Jr., Active Multi-Marketing & Merchandising Services, Inc. v. Commissioner of Internal Revenue (AMMSI)*, [74] too, discoursed burden of evidence, in this wise:

> Case law has it that the burden of evidence is the duty of the party to go forward with the evidence to overthrow the *prima facie* evidence against him [or her]. Such party has the burden to come forward with his [or her] own evidence to counteract whatever positive impression which the evidence of the other party may have created in the mind of the court, otherwise, a favorable verdict shall be returned in favor of the latter.[75]

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69 **Section 1.** *Burden of proof and burden of evidence.* - ...

**Burden of evidence is the duty of a party to present evidence sufficient** to establish or **rebut a fact in issue** to establish a *prima facie* case. Burden of evidence may shift from one party to the other in the course of the proceedings, depending on the exigencies of the case. (1a)

70 A.M. 19-08-15-SC.
71 See *Fernandez, et al. v. People*, G.R. No. 249606, July 6, 2022.
72 G.R. No. 186417, July 27, 2011.
73 Boldfacing supplied.
74 CTA EB No. 1728, March 25, 2019.
75 Citations omitted.

In retrospect, the evidence presented imprinted in our mind the fact of petitioner's receipt of the FLD/FAN, through its authorized representative Lee Carreon on January 26, 2018. Consistent with Section 1, Rule 131 of the Rules of Court, as amended, as interpreted in *Mirandilla, Jr.* and *AMMSI*, the burden of evidence is shifted to petitioner, who is tasked to counteract our impression, through its presentation of countervailing evidence. Yet, save for its bare disavowal, no such evidence was produced by petitioner. On that account, we conclude that petitioner indeed received the FLD/FAN, through Lee Carreon on January 26, 2018.

Counting thirty (30) days from petitioner's receipt of the FLD/FAN on January 26, 2018, it had until February 26, 2018,[76] to lodge a valid administrative protest thereto, as commanded by Section 228 of the NIRC, as amended. There being none, the FLD/FAN attained incontestability; scrutiny thereof is no longer possible. Truly, when the assessment has become final and executory, the taxpayer is precluded from disputing the correctness thereof, or from invoking any defense that would warrant any review of its liability on the merits.[77] Accordingly, no legal impediment exists for respondent to collect the assessed deficiency VAT and compromise penalty, covering the 1st and 2nd Quarters of TY 2016, through the FNBS served upon petitioner.[78]

**WHEREFORE**, we **RESOLVE** to:

a. **DENY** the Petition for Review dated June 6, 2018, filed by Barrio Fiesta Manufacturing Corporation, for lack of merit;

b. **ORDER** petitioner to **PAY** the total amount of **NINE MILLION FIVE HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED SIXTY-EIGHT PESOS AND TWENTY-NINE CENTAVOS (₱9,593,568.29)**, inclusive of the surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also

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76 The 30th day, *i.e.*, February 25, 2018, fell on a Sunday and Holiday.

77 See *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, March 29, 2022; *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010; *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007; and *Republic v. Lim Tian Teng & Co., Inc.*, G.R. No. L-21731, March 31, 1966.

78 See *Commissioner of Internal Revenue v. Tulio*, G.R. No. 139858, October 25, 2005, citing *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997.

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known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018, computed as follows:

| | |
|---|---|
| Basic Deficiency VAT | ₱ 6,166,075.17 |
| 25% Surcharge | 1,541,518.79 |
| 20% Deficiency Interest from 07/26/2016 to 12/31/2017 | |
| *[₱6,166,075.17 x 20% x 524/365 days]* | 1,770,423.77 |
| 12% Deficiency Interest from 01/01/2018 to 02/26/2018 | |
| *[₱6,166,075.17 x 12% x 57/365 days]* | 115,550.56 |
| **Total Amount Due as of February 26, 2018** | **₱9,593,568.29** |

c. **ORDER** petitioner to **PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the **₱9,593,568.29** total amount due as of February 26, 2018, or an amount equivalent to **₱3,154.05** per day,[79] from February 26, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018; and,

d. **UPHOLD** the Final Notice Before Seizure assailed by petitioner in this case.

**SO ORDERED.**

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

We Concur:

**ROMAN G. DEL ROSARIO**
Presiding Justice

With Concurring Opinion.
**CATHERINE T. MANAHAN**
Associate Justice

79 ₱9,593,568.29 x 12%/365 days.

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SPECIAL FIRST DIVISION***

**BARRIO FIESTA MANUFACTURING CORPORATION,**
*Petitioner,*

*-versus-*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA Case No. 9850**

Members:

**DEL ROSARIO,** *P.J., Chairperson,*
**MANAHAN,** *and*
**REYES-FAJARDO,** *JJ.*

Promulgated:

FEB 2 0 2024 3:00PM

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## CONCURRING OPINION

***MANAHAN, J.:***

I agree with the conclusion reached in the *ponencia* by denying the instant Petition for Review on the ground that the subject assessment had become final and executory.

In the instant case, petitioner asserts that it did not receive the Formal Letter of Demand (FLD) or Final Assessment Notice (FAN), as follows:

> "87. This Honorable Court has always stressed that there must be an assessment notice to the taxpayer duly informing it of the factual and legal bases of its internal revenue liabilities. If there is no valid notice sent, the assessment is void. The receipt of the assessment notice is necessary for the taxpayer to file its protest.
>
> In the case of *People of the Philippines v. Paulasi Mateaki Taulava*, the Honorable Court has also held that a taxpayer who did not receive an FLD/FAN has their right to due process violated, thus, the legal obligation to pay did not arise.

> 88. Applying the foregoing to the instant case, Petitioner did not receive any FLD/FAN, either personally or by registered mail. By respondent's failure to issue and/or serve a FLD/FAN, Petitioner was deprived of a fair opportunity to be informed of the legal and factual bases of the assessment against it. xxx"[1]

In this regard, Section 3.1.6 of Revenue Regulation (RR) No. 18-2013 pertinently provides:

> "3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence. In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances: The notice may be left at the party's registered address, with his clerk **or with a person having charge thereof.**" *(Emphasis supplied)*

Section 3.1.6 of RR No. 18-2013 provides that when personal service is not practicable, the notice shall be served by substituted service or by mail. When the mode of service is by substituted service, the notice may be left at the party's registered address with his clerk or with a person having charge thereof.

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[1] Memorandum, pars. 87-88, Docket, Vol. II, pp. 872-873.

Records show that the FAN/FLD was served by Revenue Officer (RO) Honeylette Claire P. Bobadilla to a certain Lee Carreon, thus:

> "32. Q. What happened after the FAN and FLDs were issued?
>
> A: I personally served the FAN/FLD No. 37205 and 22325 to the registered address of Petitioner. I left a copy of the FAN/FLD No. 37205 and 22325 to Barrio Fiesta's Authorized Representative **Lee Carreon**, then present at the regular place of business of the taxpayer, who introduced herself as the Accounting Supervisor."[2]

During the hearing, it was clarified that Lee Carreon was an authorized representative of petitioner, as follows:

> "JUSTICE FAJARDO:
>
> Just a clarification, also, Mr. Witness. In Question No. 32, you mentioned a Lee Carreon who is an authorized representative. How did you come to the conclusion that Carreon was an authorized representative?
>
> MS. HONELETTE CLAIRE P. BOBADILLA:
>
> A. Because she showed me her company I.D. and from the service of the Letter of Authority to the service of PAN and FAN, Ms. [Racel] Lee Carreon is always the one who was receiving the notices and documents from the BIR."[3]

As correctly found in the *ponencia*, the subject notices were duly received by petitioner through its authorized representative, Lee Carreon. Consequently, a valid substituted service is evident in this case. Considering that petitioner, through Lee Carreon, received the FAN/FLD on January 26, 2018, it only had until February 26, 2018 to file its administrative protest. However, records reveal that petitioner

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[2] Exhibit "R-15", Docket, Vol. I, p. 147.
[3] Transcript of Stenographic Notes, October 18, 2022, pp. 13-14.

failed to file the same. As such, the subject assessment had become final and executory.

Presently, Revenue Memorandum Order (RMO) No. 40-2019 was issued to prescribe the procedure for the proper service of assessment notices in accordance with the provisions of Section 3.1.6 of RR No. 18-2013.

With respect to substituted service, RMO No. 40-2019 now requires that the recipient should accomplish the acknowledgement receipt which should be indicated at the lower portion of the notice. The recipient should likewise indicate the position/designation/relationship if the receipt is made on behalf of the taxpayer in the assessment notice, among others.

Considering the foregoing, I vote to **DENY** the Petition for Review.

**CATHERINE T. MANAHAN**
Associate Justice