REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

MANNASOFT TECHNOLOGY CORPORATION, *Petitioner,*	**CTA CASE NO. 8745**
	Members: *Bautista, Chairperson* *Fabon-Victorino, and* *Ringpis-Liban, JJ.*
– versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 13 2017 2:35 p.m.

x---x

DECISION

BAUTISTA, J:

Before the Court is a Petition for Review[1] filed by petitioner Mannasoft Technology Corporation ("Mannasoft") on December 10, 2013, pursuant to *Rule 4, Section 3(a)(1)*[2] *of the Revised Rules of the Court of Tax Appeals, as amended* ("*RRCTA*"), in relation to *Section 7(a)(1)*[3] *of Republic Act ("RA") No. 1125*[4]*, as amended by RA No. 9282*[5] and *RA No. 9503*[6], which asks the Court to declare null and void respondent's

---

[1] *Records, CTA Case No. 8745, Vol. 1, Petition for Review ("PFR")*, pp. 6-60, with annexes.

[2] "Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* – (a) Exclusive original or appellate jurisdiction to review by appeal the following: (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."

[3] "Sec. 7.*Jurisdiction.* - The Court of Tax Appeals shall exercise: (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue."

[4] An Act Creating the Court of Tax Appeals, as amended.

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

[6] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

Final Decision embodied in a letter dated November 14, 2013; to direct respondent to cancel and withdraw the assessments for alleged deficiency income tax, value added tax ("VAT") and expanded withholding tax ("EWT"), inclusive of interest and penalties for calendar year ("CY") 2008; to prohibit respondent from enforcing said assessment; and to cancel and withdraw the Warrant of Distraint and/or Levy.[7]

The Parties

Petitioner Mannasoft Technology Corporation is a domestic corporation registered with the Securities and Exchange Commission.[8]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR")[9], empowered under the *1997 National Internal Revenue Code*, as amended (*"1997 NIRC"*) to authorize the examination of any taxpayer and the assessment of the correct amount of tax, and to decide disputed assessments arising under the laws administered by the Bureau of Internal Revenue ("BIR").[10]

The Facts

Pursuant to Letter of Authority ("LOA") No. 00042459[11] dated September 24, 2009, respondent conducted a tax investigation on petitioner for CY 2008.[12]

On November 22, 2011, petitioner was issued Formal Assessment Notice[13] ("FAN") dated November 16, 2011, assessing petitioner for deficiency income tax of Php13,475,472.84, VAT of Php57,102,109.92, and EWT of Php8,212,654.77.[14] It was further

---

[7] *Records, Vol. 1, PFR, Prayer*, pp. 33-34.
[8] *Id., Joint Stipulation of Facts and Issues ("JSFI")*, p. 349.
[9] Formerly her Honorable Commissioner of Internal Revenue ("CIR") Kim S. Jacinto-Henares, now his Honorable CIR Caesar R. Dulay. Therefore, any reference to the CIR will pertain to the latter.
[10] *Records, Vol. 1, JSFI*, p. 349.
[11] *Petitioner's Formal Offer of Evidence ("FOE"), Folder 1, Exhibit "P-1."*
[12] *Records, Vol. 1, JSFI*, p. 350.
[13] *BIR Records, Exhibit "R-8,"* pp. 391-396; *Petitioner's FOE, Folder 1, Exhibit "P-2."*
[14] *Records, Vol. 1, JSFI*, p. 350.

stipulated that the FAN was received by a certain Angelo Pineda, as handwritten thereon.[15]

On December 22, 2011, petitioner filed a protest[16] to the FAN.[17]

Thereafter, it was informed through a letter[18], dated January 10, 2012, that the entire docket with the letter-protest will be forwarded to the Revenue District Officer ("RDO") of Revenue District 47-East Makati City for further evaluation and necessary action.[19] Consequently, on February 20, 2012, petitioner submitted supporting documents.[20]

Nonetheless, on March 16, 2012, respondent issued a letter[21] to petitioner alleging that petitioner has not yet submitted its records.[22]

On October 23, 2012, respondent issued a Warrant of Distraint and/or Levy[23] ("WDL"),[24] which petitioner protested[25] on October 29, 2012.[26]

On November 13, 2012, petitioner once again appealed[27] for the reinvestigation of the CY 2008 case.[28] On November 25, 2013, petitioner received respondent's letter[29] denying petitioner's request for reinvestigation, with a statement that the same constitutes respondent's final decision on the matter.[30]

Petitioner filed its appeal to the Court of Tax Appeals ("CTA") on December 10, 2013. After an extension was granted,[31] respondent

[15] *Id.*
[16] *BIR Records, Exhibit "R-9,"* p. 409; *Petitioner's FOE, Folder 1, Exhibit "P-3."*
[17] *Records, Vol. 1, JSFI,* p. 350.
[18] *Petitioner's FOE, Folder 1, Exhibit "P-4."*
[19] *Records, Vol. 1, JSFI,* p. 350.
[20] *Id.; Petitioner's FOE, Folder 1, Exhibit "P-5."*
[21] *BIR Records, Exhibit "R-11,"* p. 416; *Petitioner's FOE, Folder 1, Exhibit "P-6."*
[22] *Records, Vol. 1, JSFI,* p. 350.
[23] *Petitioner's FOE, Folder 1, Exhibit "P-7."*
[24] *Records, Vol. 1, JSFI,* p. 350.
[25] *Petitioner's FOE, Folder 1, Exhibit "P-8."*
[26] *Records, Vol. 1, JSFI,* p. 350.
[27] *Petitioner's FOE, Folder 1, Exhibit "P-9."*
[28] *Records, Vol. 1, JSFI,* p. 351.
[29] *Petitioner's FOE, Folder 1, Exhibit "P-10."*
[30] *Records, Vol. 1, JSFI,* p. 351.
[31] *Id., Vol. 1,* pp. 63-65, in relation to p. 67.

filed an Answer[32] through registered mail on February 14, 2014. Thereafter, pre-trial was held on May 29, 2014.[33]

The parties submitted their Joint Stipulation of Facts and Issues ("JSFI")[34] on June 18, 2014, which was subsequently approved in the Pre-Trial Order[35] dated July 28, 2014.

During trial, petitioner presented two witnesses: *(1)* Ms. Alma L. Fernandez ("Ms. Fernandez"), petitioner's Assistant Vice President for Finance; and *(2)* Ms. Luisa A. Caleon ("Ms. Caleon"), the Court-commissioned[36] Independent Certified Public Accountant ("ICPA").

Ms. Fernandez' testimony was offered to prove that due process was not observed in the issuance of the assessments; that petitioner did not receive any notice of informal conference ("NIC"), preliminary assessment notice ("PAN"), and final decision on disputed assessment ("FDDA"); that the FAN and the WDL were not received by petitioner's authorized representative; that respondent's right to assess has prescribed; and that the assessments are devoid of factual and legal bases.[37]

On October 20, 2014, Ms. Caleon submitted her ICPA Report[38]. She likewise testified that petitioner is not liable for the alleged deficiency income tax, VAT, and EWT; that certain portions of the assessments have prescribed; and that she has verified and reviewed the assessments and the supporting documents submitted by petitioner.[39]

Petitioner filed its Formal Offer of Evidence ("FOE")[40] on November 26, 2014; which the Court resolved in a Resolution[41] dated January 29, 2015, admitting all of petitioner's documentary evidence.

---

[32] *Id., Answer,* pp. 68-72.
[33] *Id., May 29, 2014 Minutes of Hearing,* p. 337.
[34] *Records, Vol. 1, JSFI,* pp. 349-359.
[35] *Id., Pre-Trial Order ("PTO"),* pp. 378-387.
[36] *Id., August 28, 2014 Minutes of Hearing,* p. 400, in relation to pp. 401-437, with annexes.
[37] *Petitioner's FOE, Folder 2, Exhibit "P-22," Judicial Affidavit ("JA") of Alma L. Fernandez; Records, Vol. 1,* pp. 126-145; *Records, Vol. 1, August 28, 2014 Minutes of Hearing,* p. 400.
[38] *Records, Vol. 1, ICPA Report,* pp. 446-489, with annexes.
[39] *Petitioner's FOE, Folder 2, Exhibit "P-27," JA of Luisa A. Caleon; Records, Vol. 1,* pp. 502-524; *Records, Vol. 1, November 6, 2014 Minutes of Hearing,* p. 525.
[40] *Petitioner's FOE, Folders 1 and 2; Records, Vol. 1,* pp. 529-558.
[41] *Records, Vol. 2,* pp. 569-570.

After several postponements,[42] respondent presented two witnesses: *(1)* Revenue Officer Madonna Angelli U. Lubo-Marco ("RO Lubo-Marco"), and *(2)* Group Supervisor Emmanuel James P. Obsequio ("GS Obsequio").

RO Lubo-Marco testified on the conduct of the verification and examination of petitioner's deficiency taxes; and the procedures followed by respondent in the issuance of the assessment.[43] GS Obsequio testified on the reinvestigation and reexamination of petitioner's assessment for deficiency taxes; and on the issuance of the PAN and FDDA.[44]

On October 15, 2015, the Court received respondent's FOE[45], which was filed through registered mail on September 30, 2015. The Court, through a Resolution[46] dated January 22, 2016, admitted respondent's exhibits and ordered the parties to file their respective memoranda.[47]

Petitioner filed its Motion to Admit (Attached Memorandum)[48] on February 29, 2016; while respondent failed[49] to file his Memorandum.

On March 10, 2016, the Court resolved to grant petitioner's Motion to Admit (Attached Memorandum) and submitted the case for decision; hence, this Decision.

The Issues[50]

WHETHER RESPONDENT AND HIS DULY AUTHORIZED REPRESENTATIVES VIOLATED PETITIONER'S DUE PROCESS RIGHTS IN CONDUCTING THE ASSESSMENT AGAINST PETITIONER, AND IN THE ISSUANCE OF THE ASSAILED ASSESSMENTS AS MANDATED BY *SECTION 228 OF THE 1997*

---

[42] *Id., March 2, 2015 and April 21, 2015 Minutes of Hearings,* pp. 571 and 572.
[43] *Records, Vol. 2, Exhibit "R-5," JA of Madonna Angelli U. Lubo-Marco,* pp. 603-609; *Records, Vol. 2, June 29, 2015 Minutes of Hearing,* p. 575.
[44] *Records, Vol. 2, Exhibit "R-15," JA of Emmanuel James P. Obsequio,* pp. 610-615; *Records, Vol. 2, July 27, 2015 and August 17, 2015 Minutes of Hearings,* p. 585.
[45] *Records, Vol. 2, Respondent's FOE,* pp. 617-621.
[46] *Id., Vol. 2,* pp. 663-664.
[47] *Id.* at 663-664.
[48] *Id.* at 670-673, with attached petitioner's *Memorandum* at 674-720.
[49] *Id., March 3, 2016 Records Verification Report,* p. 725.
[50] *Id., Vol. 1, PTO,* p. 383.

NIRC AND *REVENUE REGULATIONS ("RR") NO. 12-99* AND OTHER PERTINENT LAWS AND REGULATIONS;

WHETHER THE RIGHT OF RESPONDENT TO ASSESS DEFICIENCY VAT FOR THE 1ST TO 3RD QUARTERS OF CY 2008 HAS ALREADY PRESCRIBED PURSUANT TO *SECTION 203 OF THE 1997 NIRC;*

WHETHER THE RIGHT OF RESPONDENT TO ASSESS DEFICIENCY EWT FOR CY 2008 HAS ALREADY PRESCRIBED; AND

WHETHER PETITIONER IS LIABLE FOR ALLEGED DEFICIENCY INCOME TAX, VAT, EWT, AND SURCHARGES.

Petitioner's Arguments[51]

Petitioner argues that respondent violated its right to due process when it did not receive the NIC, the PAN, and the FAN; that the FAN and the WDL were not received by petitioner's duly authorized officer; and that the FAN failed to state the facts and law on which the assessment was made. Petitioner also argues that respondent failed to consider the documents it submitted in support of its protest.

Further, petitioner claims that the assessments for deficiency VAT and EWT have already prescribed pursuant to *Section 203 of the 1997 NIRC;* and that the assessments have no legal and factual basis.

Respondent's Counter-Arguments[52]

Respondent argues that the assessments were made and issued in accordance with the law, rules and regulations; and, that the assessments were issued within the prescriptive period allowed by law.

Respondent avers that the FDDA should be the decision appealable to the Court, thus, the Court has no jurisdiction to take cognizance of the case since the Petition for Review was filed out of time.

---

[51] *Records, Vol. 2, Petitioner's Memorandum,* pp. 677-678.
[52] *Id., Vol. 1, Answer,* pp. 68-71.

The Ruling of the Court

The Court has jurisdiction over the present case under the term "other matters," pursuant to *Section 7(a)(1) of RA No. 1125* and *Section 3(a)(1), Rule 4 of the RRCTA.*

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine certain controversies."[53] The CTA, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.[54]

Section 7(a)(1) of RA No. 1125[55], as amended by *RA No. 9282*, provides that the Court has exclusive appellate jurisdiction to review, by way of appeal, decisions of the CIR involving disputed assessments or other matters arising under the *1997 NIRC*, as follows:

> Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;[56]

Section 3(a)(1), Rule 4 of the RRCTA implements the foregoing by stating that the CTA in Division has exclusive original or appellate jurisdiction to review, by appeal, the decisions of the CIR involving disputed assessments or other matters arising under the *1997 NIRC*, to wit:

---

53 *Guy v. Court of Appeals*, G.R. Nos. 165849, 170185, 170186, 171066 and 176650, December 10, 2007, 539 SCRA 584.
54 *CIR v. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014, 718 SCRA 513.
55 June 16, 1954.
56 Underscoring ours.

Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* -

The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;[57]

The term "disputed assessment" covers assessments wherein the taxpayer is accorded the opportunity to challenge the same, which presupposes that a valid assessment was issued by respondent. Under *RR No. 12-99,* a taxpayer whose protest is denied in whole or in part by the CIR may appeal such denial to the CTA within thirty (30) days from receipt of such denial.[58] Compliance with the procedure outlined in *RR No. 12-99* is necessary for the CTA to acquire jurisdiction over the assessment.[59] Thus, in *Oceanic Wireless Network, Inc. v. CIR*[60], the Supreme Court held:

> The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.[61]

---

[57] Underscoring ours.
[58] *Section 3.1.5.*
[59] See *SMI-Ed Philippines Technology, Inc. v. CIR,* G.R. No. 175410, November 12, 2014, 739 SCRA 691; *Rizal Commercial Banking Corporation v. CIR,* G.R. No. 168498, April 24, 2007, 522 SCRA 144; *Oceanic Wireless Network, Inc. v. CIR,* G.R. No. 148380, December 9, 2005, 447 SCRA 205.
[60] G.R. No. 148380, December 9, 2005, 447 SCRA 205.
[61] Underscoring ours.

r/

On the other hand, the term "other matters" may include the following: prescription of the CIR's right to collect taxes;[62] determination of the validity of a warrant of distraint and levy issued by the CIR;[63] and validity of a waiver of the statute of limitations.[64]

In *CIR v. Hambrecht & Quist Philippines, Inc.*[65], the Supreme Court had occasion to dissect the jurisdiction of the CTA, as follows:

> ...[W]e have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).
>
> xxx xxx xxx
>
> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.* an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
>
> xxx xxx xxx
>
> To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.[66]

---

[62] *CIR v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010, 635 SCRA 162; *Jacinto-Henares v. Atlas Consolidated Mining and Development Corporation*, CTA *EB* No. 1101 (CTA Case No. 8150), August 14, 2015.
[63] *Philippine Journalists, Inc. v. CIR*, G.R. No. 162852, December 16, 2004, 447 SCRA 214; *CIR v. Abundance Providers and Entrepreneurs Corporation*, CTA *EB* No. 999 (CTA Case No. 8040), August 18, 2014.
[64] *Philippine Journalists, Inc. v. CIR*, G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[65] G.R. No. 169225, November 17, 2010, 635 SCRA 162.
[66] Underscoring ours.

Similarly, *Phinma Property Holdings Corporation v. CTA*[67] elaborated on the term "other matters" in this wise:

> In line with the principle of *"ejusdem generis"* the term "other matters" in regard to the respondent court's jurisdiction could be those cases which do not necessarily involve disputed assessments or refunds of internal revenue taxes, fees or other charges, penalties in relation thereto or those related to customs protest or forfeiture cases but controversies which are still within the scope of the functions of the BIR and Customs.[68]

It can be gathered from the foregoing that since no assessment was validly issued by respondent (as will be discussed subsequently), the present case cannot be deemed a disputed assessment, which would require a protest before the same may be brought before the Court. Instead, the primordial issue in this case is the validity of the issuance of the assessment, and whether the same may be collected on. These are matters provided for in *Sections 207(A), 208, and 228 of the 1997 NIRC,* as follows:

> Sec. 207. *Summary Remedies.* –
>
> (A) *Distraint of Personal Property.* – Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (P1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (P1,000,000) or less, shall seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits bank accounts, and interests in and rights to personal property of such persons in sufficient quantity to satisfy the tax, or charge, together with any increment thereto incident to delinquency, and the expenses of the distraint and the cost of the subsequent sale.
>
> xxx xxx xxx
>
> Sec. 208. *Procedure for Distraint and Garnishment.* – The officer serving the warrant of distraint shall make or cause to

---

[67] CA-G.R. SP No. 38666, October 25, 1996.
[68] Underscoring ours.

be made an account of the goods, chattels, effects or other personal property distrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effect or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.

xxx xxx xxx

Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.

xxx xxx xxx

Sec. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx xxx xxx[69]

In *Philippine Journalists, Inc. v. CIR*[70] (*"Philippine Journalists"*), the taxpayer therein denied receiving the assessment and filed a Petition for Review with the CTA after receipt of the WDL. The Supreme Court ruled that the CTA has jurisdiction to determine the validity of the WDL, thus:

The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of

---

[69] Underscoring ours.
[70] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

> Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.[71]

Similar to the taxpayer in the *Philippine Journalists* case, petitioner herein did not receive the assessment, as contemplated by the due process requirement,[72] resulting to a void assessment. However, unlike the *Philippine Journalists* case, petitioner failed to file its appeal to the CTA upon knowledge of the WDL. Instead, petitioner filed its Petition for Review within thirty (30) days from receipt of the BIR letter[73] dated November 14, 2013, informing them that the taxpayer's request for reinvestigation is denied, and that the same constitutes the BIR's final decision on the matter. Nonetheless, the Court will consider the Petition for Review as timely filed since a void assessment does not attain finality.

Applying the foregoing discussion and considering that the Petition for Review filed by petitioner involves matters falling under the exclusive appellate jurisdiction of the CTA in Division, this Court has jurisdiction to settle the present controversy.

The assessments made against petitioner are void for failure to comply with due process; and are not yet final, executory, and demandable.

Section 3 of RR No. 12-99 provides the due process requirements in the issuance of a deficiency tax assessment, *viz.*:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 Notice of informal conference. - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer

71 Underscoring ours.
72 *Section 3, RR No. 12-99.*
73 *Petitioner's FOE, Folder 1, Exhibit "P-10."*

agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default...

3.1.2 Preliminary Assessment Notice (PAN). - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based ... If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void...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.[74]

Based on the foregoing, it is required that respondent issue the NIC, the PAN, and the FAN in writing to the taxpayer and that the same be received by the latter. It is elementary that a taxpayer must actually receive any assessment issued by respondent in order for the same to be valid.[75]

In the present case, respondent issued the NIC[76] dated April 14, 2011, and the PAN[77] dated October 18, 2011.

The NIC was served through personal delivery, as testified by RO Lubo-Marco:

ATTY. ALCANTARA

Q. Ms. Witness, you mentioned a notice of Informal Conference dated April 14, 2011, did you personally served (*sic*) the notice to the taxpayer?

JUSTICE BAUTISTA

What specific question number, attorney?

ATTY. ALCANTARA

No. 15, your Honors.

JUSTICE BAUTISTA

No. 15. What is the question again?

ATTY. ALCANTARA

Q. Did you personally served (*sic*) the notice to the taxpayer and is it indicated in the notice the receiving person?

MS. MARCO

A. Yes, your Honors.

---

[74] Underscoring ours.
[75] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126; *Pundanera v. CIR*, CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR*, CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR*, CTA Case No. 8264, May 19, 2014.
[76] *BIR Records, Exhibit "R-1,"* p. 348.
[77] *Id., Exhibit "R-6,"* pp. 382-384.

JUSTICE BAUTISTA

Q. What notice is that?

MS. MARCO

A. The notice for informal conference, your Honors.[78]

RO Lubo-Marco further testified that based on their copy of the NIC, the same was received by a certain "Ms. Gladys Badocdoc," whose indicated position was "Client Service Assistant."[79]

The PAN also appears to have been served personally, as shown by the rubber stamp "Received" by a certain "Gladys Badocdoc" on October 20, 2011.[80] However, RO Lubo-Marco testified that she was not the one who personally served the PAN as she was on maternity leave at that time.[81]

On the other hand, petitioner denies having received both the NIC and the PAN, as shown in the judicial affidavit of petitioner's witness, Ms. Fernandez, as follows:

> Q54: You did not mention the receipt of "Notice of Informal Conference" as well as the receipt of "Preliminary Assessment Notice (PAN)", prior to the receipt of the FAN, why is this so?
>
> A54: We have not received these documents. However when I followed up the case with the Deputy Chief of Legal Division at Revenue Region No. 8, their copies showed notation that both documents were received by a Gladys Badocdoc.[82]

Ms. Fernandez further testified that Ms. Gladys Badocdoc has no authority to receive the NIC and the PAN:

> Q55: Who is Gladys Badocdoc?
>
> A55: She is a receptionist at Mannasoft.

---

[78] *Transcript of Stenographic Notes ("TSN"), June 29, 2015,* pp. 7-8.
[79] *Id.* at 8-9.
[80] *BIR Records, Exhibit "R-6-b,"* p. 390.
[81] *TSN, June 29, 2015,* p. 9.
[82] *Petitioner's FOE, Folder 2, Exhibit "P-22," JA of Alma L. Fernandez,* p. 8; *Records, Vol. 1,* p. 133.

r

> Q56: What authority does Ms. Gladys Badocdoc have to receive the Notice of Informal Conference and the Preliminary Assessment Notice?
>
> A56: Ms. Gladys Badocdoc has no authority to receive the Notice of Informal Conference as well as the PAN.[83]

The FAN was likewise delivered by personal service and, as stipulated by the parties, was received by a certain "Mr. Angelo Pineda."[84] However, petitioner's witness, Ms. Fernandez, also testified that Mr. Pineda has no authority to receive the FAN, as follows:

> Q14: Who received the FAN?
>
> A14: It was not indicated in the Mannasoft copy but upon further inquiry from the BIR it was received by Mr. Angelo Pineda as written in its copy of the FAN.
>
> Q15: Who is Angelo Pineda?
>
> A15: Mr. Angelo Pineda is a reliever security guard assigned by the security agency.
>
> Q16: What authority, if any, does Mr. Pineda have to receive the FAN?
>
> A16: Mr. Pineda was not an employee of Mannasoft and has no authority to receive the FAN.[85]

Petitioner also submitted into evidence a Certification[86] from Bravo Prime Security Services that Mr. Angelo Pineda was its employee and was assigned as a security guard from April 2011 to April 2013.

Thus, the requirement that the notices be served to the taxpayer, or an authorized representative of the taxpayer, was not followed in the service of the NIC, the PAN, and the FAN to petitioner. The notices were received by either a receptionist or a security guard. These individuals were not authorized to receive the stated notices from the BIR, as testified to by petitioner's witness.

---

[83] *Petitioner's FOE, Folder 2, Exhibit "P-22," JA of Alma L. Fernandez*, p. 9; *Records, Vol. 1*, p. 134.
[84] *Records, Vol. 1, JSFI*, p. 350.
[85] *Petitioner's FOE, Folder 2, Exhibit "P-22," JA of Alma L. Fernandez*, p. 4; *Records, Vol. 1*, p. 129.
[86] *Petitioner's FOE, Folder 2, Exhibit "P-23."*

r

While the Court is aware about the dangers of entertaining petitioner's blanket denial of receipt of the notices served upon it by personal service, it is also incumbent upon respondent to prove that such personal service was done properly and that the notices were received by the taxpayer or the taxpayer's authorized representative. This, respondent failed to do. Even the testimony of respondent's witness show uncertainty about how the personal deliveries were made and whether they ascertained that the notices were being served upon the taxpayer's authorized representative:

> ATTY. ALCANTARA
>
> Q. Is it normal for these notices of the BIR to be served to the person in the reception area?
>
> MS. MARCO
>
> A. From our experience, ma'am they (*sic*) normally served to the receptionist.
>
> ATTY. ALCANTARA
>
> Q. Even if it seems they are not the person authorized, so you did not required (*sic*) the authorized person who should received (*sic*) this document from the BIR especially that these are final assessment notices?
>
> MS. MARCO
>
> A. I could not exactly remember what...usually we try to serve this to an accountant or to the accounting officer person.
>
> JUSTICE VICTORINO
>
> Q. Usually, but how about in this particular case?
>
> *(at this juncture witness did not answer)*
>
> You did not study your case, Ms. Witness?
>
> MS. MARCO
>
> A. Ah, as far as I remember in our case, we always asked for the accountant and I'm quite sure that in this case before we have received it by the reception we first ask for a person from the accounting department of the taxpayer.[87]

---

[87] *TSN, June 29, 2015*, pp. 10-11.

The Court had occasion to rule on the validity of service of BIR notices to an unauthorized person, thus:

> An examination of the Notice of Informal Conference reveals that a certain SG Pacelo H.B. received it. A signature above the printed name, SG Pacelo, possibly a security guard, and the date March 30, 2010 appear and below is the printed name of one Geraldine Ayllon but without any signature.
>
> Significantly, there is no indication that SG Pacelo H.B. has been authorized to receive any communication for and in behalf of petitioner. Without proof of his authorization, or at the very least his connection with petitioner, his receipt of the Notice of Informal Conference is of no moment. His receipt cannot be deemed that of petitioner.[88]

The CTA *En Banc* also affirmed the cancellation of an assessment after finding that the requirements under *Section 228 of the 1997 NIRC* and *RR No. 12-99* were not strictly complied with. A portion of the CTA *En Banc's* discussion dealt with the authority of the person who received the FAN, as follows:

> While the foregoing Certifications may have proven the fact of mailing via registered mail of the subject FAN/FLD, no evidence was, however, submitted by the CIR proving that the same had been actually served and received by petitioner or its duly authorized agent.
>
> In fact, CIR failed to establish that "S/G Macavinta, Jr." who received the said FAN/FLD on January 12, 2010, was duly authorized by SVI to receive the same in its behalf.[89]

In the instant case, petitioner denied receipt of the NIC, the PAN, and the FAN. These BIR notices were received by an individual other than its authorized representative, and the FAN was in fact received by a security guard who is not even an employee of petitioner. Respondent also failed to present any evidence to show that they served said notices to petitioner's authorized representative. Thus, the Court finds that the NIC, the PAN, and the FAN were received by persons who are unauthorized to do so, thus, their receipt of these notices cannot be deemed as receipt by petitioner.

---

[88] Underscoring ours; *Artdepot, Inc. v. CIR*, CTA Case No. 8548, January 6, 2016.
[89] *CIR v. SVI Technologies, Inc.*, C.T.A. *EB* Case No. 1304, May 24, 2016.

Non-receipt of the NIC and the PAN results to the invalidity of the FAN issued thereafter, for being violative of petitioner's right to due process. Further, since the FAN itself was also not actually received by petitioner or its authorized representative, the same cannot be considered as having been validly issued and therefore, is considered void and cannot become final, executory and demandable.

The fact that petitioner was able to protest the FAN, albeit belatedly, does not cure respondent's violation of petitioner's right to due process. Thus, petitioner's filing of a protest to the FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."[90]

The conclusion can be made that no valid assessment was issued by respondent as petitioner did not receive the same. Thus, the assessments against petitioner for CY 2008 are clearly void for being violative of petitioner's right to due process. Since the assessment against petitioner is void, the WDL subsequently issued by respondent to enforce collection of the said assessment, is likewise void. "An invalid assessment bears no valid fruit."[91]

In view of the foregoing, the Court will no longer discuss the other issues raised in the present petition.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php13,475,472.84, for value-added tax in the amount of Php57,102,109.92, and for expanded withholding tax in the amount of Php8,212,654.77, all inclusive of interest, surcharges, and penalties for calendar year 2008; and the Warrant of Distraint and/or Levy; are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

---

[90] *Pilipinas Shell Petroleum Corporation v. CIR*, G.R. No. 172598, December 21, 2007, 541 SCRA 316.
[91] *CIR v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
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 *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice