Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

CLARK WATER CORPORATION, Petitioner,	**CTA Case No. 8648** For: Assessment
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	JUL 1 9 2019 : 11:15 am

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on August 22, 2018, is a Petition for Review filed by petitioner, Clark Water Corporation, against respondent, Commissioner of Internal Revenue (CIR), which prays for the cancellation and withdrawal of respondent's assessment against petitioner for alleged deficiency income tax and value-added tax (VAT) for the taxable year 2007 including interest, surcharge and penalties, in the total amount of ₱2,823,155.13.

Petitioner is a domestic corporation duly organized and existing under and by virtues of the laws of the Republic of the Philippines, with principal business address at Depot 1901, Bicentennial Hill, Clarkfield Freeport Zone, Clark Field, Pampanga.[1] It is registered as a Clark Freeport Zone (CPZ) enterprise. As such, it is classified as a duly registered CFZ enterprise engaged in the operation and maintenance of water and sewerage system within the CFZ.[2]

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[1] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. II, p. 1118.
[2] Par. 4, JSFI, Docket, vol. II, p. 1118.

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Petitioner is authorized by the Securities and Exchange Commission (SEC) to transact business in the Philippines under SEC Registration No. A199915674 dated October 1, 1999.[3] Petitioner is likewise registered with the Bureau of Internal Revenue (BIR) – Revenue District Office No. 21A, Taxpayer Identification No. (TIN) 205-334-965-000.[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested upon under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of her Office, including among others, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 and other tax laws, rules and other regulations.[5]

On August 13, 2008, petitioner received Letter of Authority No. 2007-00013347 from BIR-RDO No. 21A.[6] Then, on June 15, 2010, petitioner received a Notice of Informal Conference.[7]

On September 16, 2011, petitioner replied to the Preliminary Collection Letter and protested the deficiency income tax and VAT assessments for CY 2007.[8]

On March 2, 2012, petitioner received a Memorandum dated February 20, 2012 issued by Regional Director Araceli L. Francisco directing the Revenue District Officer of BIR-RDO No. 21A to serve the certified machine copy of the Formal Assessment Notice (FAN) to petitioner. Attached to the Memorandum are copies of the Formal Letter of Demand (FLD) and both dated March 28, 2011 issued by Revenue Region No. 4, Pampanga.[9]

Petitioner filed its protest letter against the FLD and FAN on March 30, 2012.[10]

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[3] Par. 3, JSFI, Docket, vol. II, p. 1118.
[4] Par. 5, JSFI, Docket, vol. II, p. 1118.
[5] Par. 1, JSFI, Docket, vol. II, p. 1117.
[6] Par. 6, JSFI, Docket, vol. II, p. 1118.
[7] Par. 7, JSFI, Docket, vol. II, p. 1118.
[8] Par. 8, JSFI, Docket, vol. II, p. 1118.
[9] Par. 9, JSFI, Docket, vol. II, p. 1118.
[10] Par. 10, JSFI, Docket, vol. II, p. 1118.

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On April 18, 2013, Revenue Seizure Officer Sergio D. Pineda served upon petitioner a Warrant of Distraint and/or Levy dated March 19, 2013.[11]

Hence, petitioner filed the instant Petition for Review (with Urgent Motion to Quash Warrant of Distraint and/or Levy and/or to Suspend Collection of Taxes) with this Court on April 26, 2013.[12]

Respondent filed his Answer[13] to the Petition for Review on August 27, 2013, interposing the following special and affirmative defenses:

> "A. No error or illegality can be ascribed to Respondent's assessment of Petitioner's deficiency tax liability, as she observed due process in undertaking such:
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> > i. Respondent sent the *Preliminary* and *Final Assessment Notices* through registered mail;
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> > ii. Service through registered mail is a valid mode of serving *Preliminary* and *Final Assessment Notices* upon the taxpayer;
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> > iii. Petitioner received the *Preliminary* and *Final Assessment Notices* in the regular course of delivery through registered mail, since there was no return to sender, or any other indication otherwise; and
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> > iv. Petitioner cannot invoke lack of knowledge about the deficiency assessment as it had been fully aware of the actions undertaken by Respondent, both preceding and succeeding the issuance of the allegedly

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[11] Par. 11, JSFI, Docket, vol. II, p. 1118.
[12] Docket, vol. I, pp. 7-35.
[13] Docket, vol. I, pp. 435-449.

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unreceived *Preliminary* and *Final Assessment Notices*, in pursuit of the same.

B. This Honorable Court has no jurisdiction over this particular case;

i. Petitioner failed to interpose a timely protest upon the *Final Assessment Notice* issued against it; and

ii. Petitioner failed to submit the supporting documents necessary to refute the findings of the revenue examiners, within the statutorily mandated sixty (60) – day period.

C. Respondent properly apprised petitioner of its income tax deficiencies for the taxable year 2007.

D. The law heavily presumes upon the favor of the propriety and exactness of tax assessments.

The Urgent Motion to Quash Warrant of Distraint and/or Levy and/or to Suspend Collection of Taxes was set for hearing.[14] Thereafter, the Court granted the motion on November 7, 2014 and ordered, among others, the posting of a cash bond in the amount of ₱2,823,155.13, or posting a GSIS bond or a bond from other reputable surety company, in the amount equivalent to one and a half (1½) of the disputed assessment or ₱4,234,732.70.[15]

The Court initially set the case for Pre-Trial Conference on October 11, 2013[16], which was reset to November 29, 2013[17] and later on reset to January 29, 2015[18]. The Pre-Trial Brief of petitioner and respondent were both filed on October 8, 2013[19]. On November 6, 2013, petitioner filed a Motion for Leave to File Attached Amended

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[14] Notice of Hearing dated May 2, 2013, Docket, vol. I, p. 152.
[15] Resolution dated November 7, 2014, Docket, vol. II, p. 1055-1060.
[16] Resolution dated September 3, 2013, Docket, vol. I, p. 451.
[17] Order dated October 9, 2013, Docket, vol. II, p. 658.
[18] Resolution dated November 7, 2014, Docket, vol. II, p. 1055-1060.
[19] Docket, vol. II, pp. 636-647 and pp. 652-657.

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Pre-Trial Brief[20] which was granted by the Court during the hearing held on November 15, 2013[21].

Petitioner filed its Compliance on November 21, 2014[22], complying with the Resolution dated November 7, 2014, and attaching thereto the following:

1. Photocopy of the Surety Bond;
2. Certified Photocopy of the Certificate of Accreditation and Authority issued to MAPFRE (with photos of the authorized agents of the Bonding Company);
3. Photocopy of the Certificate of Compliance of MAPFRE;
4. Photocopy of the proof of payment of legal fees;
5. Certified Photocopy of the Certificate of Accreditation and Authority issued to MAPFRE (with photos of the authorized agents of the Bonding Company);
6. Photocopy of the Secretary's Certificate dated January 31, 2013;

On December 16, 2014, the Court noted the Compliance filed by the petitioner.[23]

The Court received the parties Joint Stipulation of Facts and Issues on February 23, 2015.[24]

Thereafter, the Court issued a Pre-Trial Order on March 10, 2015[25], terminating the pre-trial.

Trial ensued, giving both parties the opportunity to present their respective evidence.

After presentation, marking, identification, and formal offer, the Court admitted Exhibits "P-1" to "P-26", inclusive of submarkings, as petitioner's evidence.[26]

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[20] Docket, vol. II, pp. 843-860.
[21] Minutes of the hearing held on November 15, 2013, Docket, vol. II, pp.863-864.
[22] Docket, vol. II, pp.1061-1075.
[23] Resolution dated December 16, 2014, Docket, vol. II, p.1078.
[24] Docket, vol. II, pp. 1117-1124.
[25] Docket, vol. II, pp. 1134-1142.
[26] Resolution dated January 21, 2016, Docket, vol. III, pp. 1444-1445 and Exhibit "P-16", Resolution dated April 19, 2016, Docket, vol. III, pp. 1470-1471.

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Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
P-1	Letter of Authority No. 2007-00013347 dated August 5, 2008 issued by respondent and received by petitioner on August 13, 2008
P-2	Notice of Informal Conference dated June 15, 2010
P-3	Preliminary Collection Letter dated August 10, 2011 which petitioner received on September 8, 2011
P-4	Memorandum dated February 20, 2012 instructing BIR-RDO No. 21A to transmit a certified copy of the Final Assessment Notice
P-5	Certified Copy of the FLD dated March 28, 2011
P-6	Certified Copy of the FAN dated march 28, 2011 with the attached Adjusted Summary of Deficiency Taxes/increments which petitioner received on March 2, 2012
P-7	BIR Letter dated September 17, 2012 addressed to Mr. Jesus D. Laigo
P-8	Warrant of Distraint and/or Levy dated April 18, 2013
P-9	Petitioner's Letter dated September 16, 2011 in response to the Preliminary Collection Letter
P-10	Petitioner's Supplemental Letter Reply dated November 11, 2011
P-11	Audited Financial Statements of Petitioner for CY 2007
P-12	Petitioner's Amended Articles of Incorporation dated May 13, 2003
P-13	Petitioner's Water Resources, Storage and Water & Wastewater Treatment Map
P-14	Petitioner's Certificate of Registration (BIR Form No. 2303) dated March 3, 2000
P-15	Petitioner's Annual Income Tax Return for CY 2007 (BIR Form No. 1702)
P-17	Petitioner's Protest Letter to the FAN dated March 30, 2012
P-17.1	2007 Billing Summary
P-18	Petitioner's Document Logbook for the period covering March 1, 2011 to May 31, 2011
P-19	Certification dated September 15, 2011 issued by Alvin L. Palo of the CFZ Post Office
P-20, inclusive of submarkings	Sworn Statement of Mr. Christopher Petronio R. Marin to Questions Propounded by Atty. Juan Paolo J. Santos dated October 4, 2013
P-21, inclusive of submarkings	Sworn Statement of Ms. Aileen S. Baluyot to Questions Propounded by Atty. Juan Paolo S. Santos dated October 4, 2014
P-22	Partial Report of the Findings of the Independent CPA dated April 20, 2015
P-23	Final Consolidated Report of the Findings of the Independent CPA dated April 24, 2015
P-24, inclusive	Petitioner's water billing statements/official receipts

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of submarkings	for CY 2007
P-25, inclusive of submarkings	Petitioner's statements of accounts for CY 2007
P-26, inclusive of submarkings	Sworn Statement of Dr. Arlyn Sicangco-Villanueva to Questions Propounded by Atty. Daryl Ray F. Dumayas dated June 26, 2015

As to respondent, the Court admitted Exhibits "R-9" to "R-21", inclusive of markings, as part of respondent's evidence,[27] to wit:

Exhibit:	Description:
R-9	Preliminary Assessment Notice
R-10	Formal Letter of Demand with Final Assessment Notices
R-11	Memorandum from the Legal Division
R-13	Transmittal Sheet dated March 8, 2011
R-14	Transmittal Sheet dated March 28, 2011
R-15	Registry Receipt No. 476
R-16	Registry Receipt No. 567
R-18	Judicial Affidavit of Clavel C. Sunga
R-18-1	Name and Signature of Bethrel M. Bautista on her Judicial Affidavit
R-19	Judicial Affidavit of Bethrel M. Bautista
R-19-1	Name and Signature of Bethrel M. Bautista on her Judicial Affidavit
R-20	Final Decision on Disputed Assessment
R-21	Registry Receipt

Subsequently, respondent's Memorandum[28] was submitted on July 26, 2018; while petitioner filed its Memorandum[29] on August 10, 2018. Hence, the Court declared the case submitted for decision on August 22, 2018.[30]

The parties submitted the following issues for the Court's disposition:[31]

1. Whether or not petitioner is liable for the deficiency income and value-added tax liabilities assessed against it, including penalties, surcharges and interest, in the aggregate amount of Two Million Eight Hundred Twenty-Three Thousand One Hundred Fifty-

[27] Resolution dated October 3, 2017, Docket, vol. III, pp. 1610-1611 and Exhibit "R-20", Resolution dated July 5, 2018, Docket, vol. III, pp. 1674-1675.
[28] Docket, vol. III, pp. 1679-1694.
[29] Docket, vol. III, pp. 1701-1733.
[30] Resolution dated August 22, 2018, Docket, vol. III, p. 1735.
[31] Issues, Pre-Trial Order, Docket, vol. II, pp. 1134-1142.

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Five Pesos and 13/100 (₱2,823,155.13) for taxable year 2007;

2. Whether or not this Honorable Court has jurisdiction over this particular case; and

3. Whether or not respondent's right to assess petitioner deficiency income tax and VAT for 2007 has prescribed.

Petitioner argues that the deficiency tax assessments and VAT assessment for CY 2007 are null and void because it did not receive the respondent's PAN and FAN in violation of the mandatory requirements under Section 228 of the Tax Code and RR No. 12-99.[32] Petitioner contends that respondent violated its right to due process when it served the PCL on September 8, 2011 without first serving the FLD/FAN to petitioner.[33] It further avers that the PCL that was served upon it on September 8, 2011 cannot be considered the "assessment notice" referred to in Section 228, Tax Code and RR No. 12-99 because it does not contain the facts and law on which the assessment are based.[34] Moreover, it argues that, it submitted supporting documents to the respondent after it received the PCL.[35]

Petitioner insists that respondent's right to assess the alleged deficiency income tax and VAT for 2007 has already prescribed in view of the lapse of the three-year prescriptive period provided under Section 203, Tax Code.[36]

Moreover, petitioner claims that, it is not subject to 35% RCIT and 12% VAT on its sales to enterprises within the Customs Territory because it is a duly-registered CSEZ Enterprise, as evidenced by its Certificate of Registration and Tax Exemption (CORTE) with Certificate No. C2012-031 issued by the Clark Development Corporation. As such, petitioner further claims that, it is entitled to the preferential rate of 5% tax on its gross income, in lieu of all

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[32] Par. 42, Memorandum, Docket, vol. III, p. 1712.
[33] Par. 52, Memorandum, Docket, Vol. III, p. 1718.
[34] Par. 56, Memorandum, Docket, vol. III, p. 1719.
[35] Par. 62, Memorandum, Docket, vol. III, p. 1720.
[36] Par. B. Memorandum, Docket, vol. III, p. 1721.

national and local taxes, pursuant to Section 15 of Republic Act (RA) No. 7227, as amended by RA No. 9400.[37]

However, respondent argues that the Court has no jurisdiction to take cognizance of the petition considering that the assessment had become final, executory and demandable due to petitioner's failure to interpose a valid and timely protest.[38] Respondent further alleged that the FAN was mailed through registered mail on March 28, 2011, under Registry Receipt No. 567 and petitioner protested the assessment against it only on September 16, 2011.[39]

Nonetheless, this Court finds it imperative to discuss first the jurisdiction of this Court to take cognizance of the instant petition.

Pertinent to this issue is Section 228 of the NIRC of 1997, as amended, which provides:

> "SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation

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[37] Par. 78, Memorandum, Docket, vol. III, p. 1725.
[38] 2nd Par. under Par. i, Memorandum, vol. III, p. 1681.
[39] 10th Par. under Par. i, Memorandum, vol. III, p. 1682.

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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.

xxx xxx xxx" (Emphasis supplied)

In relation thereto, Sections 3.1.2 and 3.1.4 of RA 12-99, dated September 6, 1999 provides:

"3.1.1 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 a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and 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 Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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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. xxx" (Emphasis supplied)

From the foregoing provisions, it can be seen that the taxpayer must be informed in writing of the facts and the law on which the assessment is made through the issuance and receipt of the PAN and FAN otherwise the assessment is void.

Sections 3.1.2 and 3.1.4 of RR No. 12-99 provide that service of the PAN/FAN to the taxpayer may be made by registered mail. It is settled in our jurisprudence that if the assessment notice is served by registered mail, and the original was not returned to the BIR, the presumption is that the taxpayer received said assessment notice in the regular course of mail, pursuant to Section 3 (v), Rule 131 of the Rules of Court, which provides as follows:

> "Sec. 3. Disputable Presumptions. The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail."

In the case at bar, petitioner denied receiving the PAN and FLD/FAN. It follows that the burden of proof has shifted to the BIR to show by contrary evidence that petitioner indeed received the assessment notices in the due course of mail following the ruling of the Supreme Court in the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[40], to wit:

> "Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by

[40] G.R. No. 157064, August 7, 2006.

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competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee *(Republic vs. Court of Appeals, 149 SCRA 351).*

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xxx. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. xxx.

xxx xxx xxx

In *Protectors Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to

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present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. The respondent presented the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted. xxx.

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Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained. Yet respondent failed to present such evidence.

In the case of *Nava v. Commissioner of Internal Revenue*, this Court stressed on the importance of proving the release, mailing or sending of the notice.

> 'While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayers intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.' "

To prove non-receipt of the FLD/FAN, petitioner presented a Certification[41] marked as Exhibit P-19, which certifies that the Registered Letter with no. BIR 567 addressed to petitioner which was sent by BIR San Fernando, Pampanga on March 30, 2011 was

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[41] Certification issued by Mr. Alvin L. Palo, Postman in-charge of the Philippine Postal Corporation Region 3, Clark Freeport Zone Post Office, 2023 Pampanga, Exhibit "P-19", Docket, vol. II, p. 1386.

verified to be accidentally missing/misplaced by the Postman in-charge.

Petitioner's witness, Ms. Aileen S. Baluyot, Senior Customer Service Officer testified in her Judicial Affidavit[42], the pertinent portions of which are quoted hereunder:

"Q14: You mentioned earlier about a Certification from the post office executed by Alvin L. Palo. Who secured the said Certification?

A: I secured this Certification from the Clark Freeport Zone Post Office.

Q15: Why did you secure the said Certification?

A: When petitioner received the Preliminary Collection Letter dated August 10, 2011 on September 8, 2011, I was approached by then Director for Finance and Administration, Ms. Joan T. Cordero, to inquire whether petitioner received a FAN from respondent. Upon verification of the Customer Service Team's records, I informed her that no such correspondence was received from respondent.

Q16. After you informed Ms. Cordero that no FAN was received from respondent, what did she do?

A. Ms. Cordero requested me to verify with Clark Freeport Zone Post Office whether a FAN was sent to petitioner.

Q17. What did you do after, if any?

A. I proceeded to the Clark Freeport Zone Post Office to verify whether any letters addressed to petitioner was mailed by respondent during the period of February 2011 to September 2011.

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[42] Exhibit "P-21", Judicial Affidavit of Ms. Aileen S. Baluyot, Senior Customer Service Officer, Docket, vol. II, pp. 666-667.

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Q18. What was the result of your verification?

A. I was informed by Mr. Alvin L. Palo, Postman-in-charge, that a certain Registered Letter No. BIR 567 from the respondent and addressed to petitioner was verified to be misplaced upon checking his delivery book.

Q19. What did you do, if any, with such information?

A. In order to document Mr. Palo's statement, I requested a Certification on the status of Registered Letter No. 567."

During the hearing on April 14, 2015, petitioner's witness, Ms. Baluyot, was questioned on the matter:

"ATTY. SOMERA:

So, how about the certification that you mentioned in your Judicial Affidavit, did you personally speak to Mr. Alvin Palo about the?

MS. BALUYOT:

Yes, I was able to talk to him.

ATTY. SOMERA:

So, can you enlighten this Court what did, what explanation did the Postman tell you with regard to the statement that the Assessment Notice was allegedly misplaced?

MS. BALUYOT:

Because he can't find it in his delivery receipt.

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ATTY. SOMERA:

Only in his delivery receipt?

MS. BALUYOT:

Yes.

ATTY. SOMERA:

In his logbook?

MS. BALUYOT:

Yes.

ATTY. SOMERA:

Misplaced in the logbook?

MS. BALUYOT:

I'm not sure, but he can't see it in his delivery receipt so he can't identify where the document is and who received the document."[43]

On the other hand, to prove that petitioner indeed received the required PAN and FLD/FAN, respondent presented the following documents: 1) copy of the PAN and FLD/FAN[44]; 2) transmittal sheet forwarded by BIR-Assessment Division to the BIR-Administrative Division of BIR Revenue Region No. 4 showing the endorsement of PAN and FLD/FAN for mailing[45]; and 3) Registry Receipt Nos. 476 and 567 for PAN and FLD/FAN respectively by registered mail[46].

[43] Transcript of the Stenographic Notes of the hearing dated April 14, 2015, pp. 15-16.
[44] Exhibit "R-9" and Exhibit "R-10", BIR Records, vol. II, pp. 856-875 and 866-874.
[45] Exhibit "R-13" and Exhibit "R-14", Docket, vol. III, pp. 1573 and 1574.
[46] Exhibit "R-15" and Exhibit "R-16", Docket, vol. III, pp. 1573 and 1574.

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The failure of the respondent to prove that petitioner or its authorized representative received the assessment stating the facts and the law on which the assessment was made as required by Sec. 228 of RA No. 8424, shall render the assessment made by the CIR void.

The Supreme Court has upheld the importance of issuing a PAN in complying with the due process requirement, to wit:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.
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> xxx xxx xxx
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> 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 Stars 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**

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> **assessment made by the CIR is void.**" [47](Emphasis supplied)

In *Estate of the Late Juliana Diez Vda. de Gabriel* vs. *Commissioner of Internal Revenue,*[48] the Supreme Court reiterated its pronouncement that due process requires that the assessment must be served on and received by the taxpayer, *viz:*

> "(D)ue 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:
>
> 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**." (Emphasis supplied)

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[49]

Petitioner's right to due process was violated, thus, rendering the assessment null and void. Consequently, there is no factual and legal basis for respondent to formally demand the payment or to collect the deficiency taxes which are not covered by a valid assessment.

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[47] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[48] G.R. No. 155541, January 27, 2004.
[49] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633,647.

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From the foregoing, the conclusion can be made that no valid assessment was issued by respondent as petitioner did not receive the same. The assessment against petitioner for CY 2007 is clearly void for being violative of petitioner's right to due process. Considering that petitioner did not actually receive the assessment, the same cannot be considered final, executory, and demandable. Therefore, respondent's right to collect thereon has no basis.

With the above-mentioned findings of the Court, discussing the other issues raised by the parties becomes unnecessary for it is well-settled that a void assessment bears no fruit.

WHEREFORE, premises considered, the Instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Letter of Demand and Final Assessment Notice for deficiency income tax and value-added tax, inclusive of interest, surcharge and penalties amounting to ₱ 2,823,155.13 for the taxable year 2007, are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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
Chairperson, Special First Division