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

## SECOND DIVISION

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| **MEGACONSTRUCT GROUP, INC.,**<br>Petitioner, | **CTA CASE NO. 9992**<br><br>Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson, and*<br>**BACORRO-VILLENA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,**<br>Respondent. | Promulgated:<br>DEC 02 2021<br>4:30 p.m. |

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# DECISION

**CASTAÑEDA, JR., *J.*:**

### THE CASE

The present *Petition for Review* filed on December 21, 2018, prays that the assessments issued by respondent against petitioner for alleged tax liability in the amount of ₱2,947,550.37, as invalid.[1]

### THE PARTIES

Petitioner Megaconstruct Group, Inc. is a domestic corporation with a current principal office at Blk. 8, Lot 4 King Philip St., Royal Subd., Bulihan, Malolos City, Province of Bulacan, 3000.[2]

Respondent Bureau of Internal Revenue (BIR) is the government instrumentality or agency of the National Government

[1] Summary of the Case, Pre-Trial Order dated October 1, 2019, Docket, p. 172.
[2] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, pp. 181 to 182.

under the Executive Department, headed by its Commissioner, that is tasked with implementing the National Internal Revenue Code (NIRC), and in the process, assess and collect domestic taxes from persons liable to pay taxes under the said NIRC.[3]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner was initially registered, for taxation purposes, with respondent BIR Revenue District Office (RDO) No. 36 at Palawan, but is now registered in the RDO No. 25A of Plaridel, Bulacan.[4]

On August 3, 2011, petitioner filed the letter dated July 21, 2011 with RDO No. 36,[5] informing respondent BIR of its change of address from 42 Manga Ave., Poblacion, Narra, Palawan, to Lot 4 Block 8 King Philip St. Royale Estates Subd., Bulihan, Malolos City, Bulacan.

Subsequently, on October 23, 2012, petitioner filed another letter dated August 15, 2012 with the same RDO,[6] submitting the Memorandum dated July 30, 2012 issued by Revenue Officer (RO) Marita P. Panteriori of RDO 25A, Plaridel, Bulacan, recommending the approval of the transfer of registration of petitioner to Bulacan.

The *Letter of Authority* (LOA) dated November 3, 2015 signed by Regional Director Araceli I. Francisco for taxable year 2014 was issued, authorizing the examination of petitioner's books of accounts and other accounting records.[7]

On June 20, 2017, petitioner filed the letter dated June 16, 2017 addressed to OIC-Revenue District Officer Vicente P. Gamad of RDO 36,[8] requesting that all letters to petitioner in relation to the LOA be addressed and delivered to its office address at Bulacan. ye

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[3] Par. 2, Stipulated Facts, JSFI, Docket, p. 182.
[4] Par. 3, Stipulated Facts, JSFI, Docket, p. 182.
[5] Exhibit "P-3", Docket, p. 208; Exhibit "P-2" (Q&A No. 1), p. 205; Transcript of Stenographic Notes (TSN) at the hearing held on October 7, 2019, pp. 12 to 14.
[6] Exhibit "P-5", Docket, pp. 209 to 210; TSN at the hearing held on October 7, 2019, pp. 12 to 14.
[7] Par. 9, *Petition for Review*, vis-à-vis Par. 4, *Answer*, Docket, pp. 12, and 49 to 50, respectively.
[8] Exhibit "P-6", Docket, p. 211.

On March 27, 2018, respondent issued a *Preliminary Assessment Notice* (PAN) against petitioner for deficiency income tax for taxable year 2014, indicating therein the latter's former Palawan address.[9]

Thereafter, respondent issued the *Final Letter of Demand* (FLD) with attached *Assessment Notices* (FAN), all dated April 13, 2018, against petitioner,[10] requesting the latter to pay deficiency income tax for taxable year 2014, in the aggregate amount of ₱2,947,550.37, including compromise penalty. Just as in the above-stated PAN, respondent used petitioner's former Palawan address.

Petitioner received the *Preliminary Collection Letter* (PCL) dated October 23, 2018.[11] Notably, in the said PCL, respondent now indicates petitioner's address in Bulacan.[12]

Subsequently, petitioner received the *Final Notice Before Seizure* (FNBS) dated November 14, 2018,[13] which likewise indicates the address of petitioner in Bulacan.[14]

On December 19, 2018, petitioner filed its letter with respondent,[15] protesting the said PCL and FNBS, and requesting for reconsideration and/or reinvestigation of the same.

## PROCEEDINGS BEFORE THIS COURT

On December 21, 2018, petitioner filed the present *Petition for Review,*[16] wherein it prayed, *inter alia,* that after notice and hearing, an order be issued declaring the suspension of payment of the taxes in question in the amount of ₱2,947,550.37, and a temporary restraining order or preliminary injunction be issued enjoining respondent from collecting the same amount from petitioner, or levying the assets and property of the latter to pay for said taxes.

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[9] Exhibits "R-3" and "R-3-A", BIR Records, pp. 384 to 386.
[10] Exhibits "R-7" and "R-7-A", BIR Records, pp. 395 to 397; Exhibits "R-5" and "R-6", BIR Records, pp. 404 to 405.
[11] Par. 4, Stipulated Facts, JSFI, Docket, p. 182.
[12] Exhibit "P-7", Docket, p. 213; Exhibit "R-9", Docket, p. 80.
[13] Par. 5, Stipulated Facts, JSFI, Docket, p. 182.
[14] Exhibit "P-8", Docket, p. 215; Exhibit "R-10", Docket, p. 81.
[15] Exhibit "P-9", Docket, pp. 217 to 218; Exhibit "P-1" (Q&A No. 5), Docket, p. 200.
[16] Docket, pp. 10 to 19.

Respondent filed its *Answer* on February 15, 2019,[17] interposing, *inter alia*, the following special and affirmative defenses, to wit: (1) the FAN and FLD were served to the petitioner through registered mail; (2) the Court has no jurisdiction to entertain the instant petition for review for failure of petitioner to protest the assessment, hence, has become final and executory; (3) the period to assess petitioner's internal revenue taxes for taxable year 2014 has not yet prescribed; and (4) the subject assessment is valid and correct and petitioner has the burden of proof to impugn its validity.

On March 6, 2019, respondent transmitted to the Court the *BIR Records* of this case, consisting of 453 pages.[18]

In the Resolution dated March 12, 2019,[19] the Court: (1) ordered respondent to file his comment or opposition to petitioner's prayer for suspension of payment, temporary restraining order and/or injunction, incorporated in the present *Petition for Review*; and (2) scheduled a preliminary hearing on the said prayer on March 28, 2019. Thus, on March 21, 2019, respondent filed its *Comment and/or Opposition (To Motion for Suspension of Payment, Temporary Restraining Order and/or Injunction)*.[20] At the scheduled hearing held on March 28, 2019, the Court, *inter alia*, granted petitioner's motion to suspend collection of tax, subject to the posting of an acceptable surety bond in the amount equivalent to the amount of the alleged basic tax assessment, within then (10) days from notice thereof.[21]

The pre-trial conference was scheduled on May 9, 2019.[22] The same, however, was reset to, and held on, July 18, 2019.[23] Prior to the said conference, *Respondent's Pre-Trial Brief* was filed on May 6, 2019,[24] while the *Pre-Trial Brief (For The Petitioner)* was submitted on May 29, 2019.[25]

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[17] Docket, pp. 49 to 55.
[18] Respondent's *Submission* dated March 5, 2019, Docket, p. 45.
[19] Docket, p. 48.
[20] Docket, pp. 56 to 58.
[21] Minutes of the hearing held on, and Order dated, March 28, 2019, Docket, pp. 59 and 67 to 68, respectively.
[22] *Notice of Pre-trial Conference* dated April 4, 2019, Docket, pp. 65 to 66.
[23] Minutes of the hearing held on, and Order dated, May 9, 2019, Docket, pp. 110 to 111; Minutes of the hearing held on, and Order dated, July 18, 2019, Docket, pp. 147 to 148.
[24] Docket, pp. 69 to 73.
[25] Docket, pp. 129 to 132.

On September 5, 2019, the parties submitted their *Joint Admission of Fact.*[26] Subsequently, the Pre-Trial Order dated October 1, 2019 was issued,[27] adopting the said *Joint Admission of Fact*, and deeming the termination of the pre-trial.

Subsequently, on October 4, 2019, the parties file their *Joint Stipulation of Facts and Issues.*[28]

At the hearing held on October 7, 2019, the Court, upon manifestation of petitioner's counsel, granted the parties ten (10) days therefrom within which to file their *Amended Joint Stipulation of Facts and Issues.*[29] Relative thereto, petitioner filed its *Motion to Amend Pre-Trial Order* on October 16, 2019,[30] with respondent's comment thereto submitted on November 8, 2019.[31]

In the meantime, as trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimony of petitioner's internal auditor, Ms. Ma. Melanie Suerte Felipe Moso.[32]

On October 16, 2019, petitioner filed its *Motion To Admit Formal Offer of Evidence*,[33] attaching therewith, its *Formal Offer of Evidence.*[34]

In the Resolution dated November 27, 2019,[35] the Court: (1) granted *Motion To Admit Formal Offer of Evidence* of petitioner, and admitted the latter's *Formal Offer of Evidence*; and (2) granted petitioner's *Motion to Amend Pre-Trial Order*, ordering the Clerk of Court to amend the Pre-Trial Order dated October 1, 2019 to reflect the amendments enumerated in the said Resolution.

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[26] Docket, pp. 162 to 163.
[27] Docket, pp. 172 to 175.
[28] Docket, pp. 181 to 185.
[29] Minutes of the hearing held on, and Order dated, October 7, 2019, Docket, p. 186; TSN dated October 7, 2019, pp. 2 to 3.
[30] Docket, pp. 228 to 231.
[31] Respondent's *Manifestation/Comment (To Petitioner's Motion to Amend Pre-trial Order and Motion to Admit Formal Offer of Evidence)*, Docket, pp. 249 to 251.
[32] Exhibit "P-1", Docket, pp. 199 to 203; Exhibit "P-2", Docket, pp. 204 to 207; Minutes of the hearing held on, and Order dated, October 7, 2019, Docket, pp. 186 to 188.
[33] Docket, pp. 192 to 194.
[34] Docket, pp. 195 to 198.
[35] Docket, pp. 263 to 266.

Respondent posted his *Comment/Opposition (To Petitioner's Formal Offer of Evidence)* on December 9, 2019.[36]

In the Resolution dated January 22, 2020,[37] the Court admitted petitioner's exhibits, *except* for Exhibit "P-4", for failure to present the original for comparison.

On the other hand, respondent likewise presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses, namely: Revenue Officers (1) Maila A. Garcellano,[38] (2) Florence Imee A. Joaquin,[39] (3) Ma. Paz Arcilla,[40] (4) Joesebeth M. Gregorio;[41] and (5) Mailing In-Charge, Mr. Benhur C. Nacorda.[42]

On July 27, 2020, *Respondent's Formal Offer of Evidence* was filed.[43] Petitioner then filed its *Comments* thereto on August 27, 2020.[44] In the Resolution October 12, 2020,[45] the Court admitted respondent's exhibits.

*Respondent's Memorandum* was posted on November 16, 2020;[46] while the *Memorandum for the Petitioner* was filed on November 25, 2020.[47]

This case was considered submitted for decision on January 8, 2021.[48]

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[36] Docket, pp. 270 to 271.
[37] Docket, pp. 274 to 275.
[38] Exhibit "R-13", Docket, pp. 135 to 138; Minutes of the hearing held on, and Order dated, March 9, 2020, Docket, pp. 281 to 282.
[39] Exhibit "R-14", Docket, pp. 98 to 101; Minutes of the hearing held on, and Order dated, March 9, 2020, Docket, pp. 281 to 282.
[40] Exhibit "R-15", Docket, pp. 85 to 89; Minutes of the hearing held on, and Order dated, March 9, 2020, Docket, pp. 281 to 282.
[41] Exhibit "R-17", Docket, pp. 76 to 79; Minutes of the hearing held on, and Order dated, March 9, 2020, Docket, pp. 281 to 282.
[42] Exhibit "P-16", Docket, pp. 115 to 118; Minutes of the hearing held on, and Order dated, March 9, 2020, Docket, pp. 281 to 282.
[43] Docket, pp. 296 to 302.
[44] Docket, pp. 327 to 329.
[45] Docket, pp. 331 to 332.
[46] Docket, pp. 342 to 349.
[47] Docket, pp. 333 to 341.
[48] Resolution dated January 8, 2021, Docket, pp. 351.

## THE ISSUE RAISED BY THE PARTIES

The issue, as raised by the parties herein, for the Court's resolution, is as follows:

> "Whether or not petitioner is liable for the taxes stated in the Preliminary Collection Letter in the amount of P2,947,550.37 for taxable year 2014."[49]

***Petitioner's arguments:***

Petitioner argues that the PAN was not received by it; that considering the PAN was not received by petitioner, the fifteen (15)-day period to challenged the same did not commence, and as such, the FAN issued against it violated its right to due process; and that RO Mila A. Garcellano was not authorized to conduct the audit of the books of accounts of petitioner.

***Respondent's counter-arguments:***

Respondent contends that petitioner is liable for deficiency income tax and miscellaneous taxes for taxable year 2014 in the aggregate amount of ₱2,947,550.37; that for failure of petitioner to file a timely protest to the assessments, the same have become final, executory and demandable, pursuant to Section 228 of the Tax Code and Revenue Regulations (RR) No. 18-2013; that petitioner is estopped from denying receipt of the PAN, Amended PAN, and FAN; that the PAN and FAN were served to petitioner's address in Palawan via registered mail; that despite petitioner continuously denied receiving the notices from respondent and even argued that it had already changed its address as early as August 3, 2011, petitioner still indicated in its *Annual Income Tax Return* (Annual ITR) for taxable year 2014 filed on April 13, 2015, together with its *Notes to Financial Statements*, its business address in Palawan; that it is well-established doctrine that the assessment is valid and correct, and petitioner has the burden of proof to impugn its validity; and that taxes are the life blood of the government and should be collected without unnecessary hindrance. *jr*

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[49] Stipulated Issue, JSFI, Docket, p. 182.

## THE COURT'S RULING

The present *Petition for Review* is meritorious.

***Petitioner's transfer from RDO No. 36 to RDO No. 25A has been validly made, insofar as the subject income tax assessment is concerned.***

Section 11 of RR No. 12-85 provides:

> "Sec. 11. *Change of Address*. - **In case of change of address, the taxpayer must give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business**, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appear in is tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply." *(Emphasis added)*

Based on the foregoing provision, in case of change of address, the taxpayer is required to give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business.[50]

In this case, petitioner has complied with above-quoted Section 11 of RR No. 12-85. Records show that on August 3, 2011, petitioner filed the letter dated July 21, 2011 with RDO No. 36,[51] informing respondent BIR of its change of address from 42 Manga Ave., Poblacion, Narra, Palawan, to Lot 4 Block 8 King Philip St. Royale Estates Subd., Bulihan, Malolos City, Bulacan. Thereafter, on

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[50] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.

[51] Exhibit "P-3", Docket, p. 208; Exhibit "P-2" (Q&A No. 1), p. 205; TSN at the hearing held on October 7, 2019, pp. 12 to 14.

October 23, 2012, petitioner filed another letter dated August 15, 2012 with the same RDO,[52] submitting the Memorandum dated July 30, 2012 issued by RO Marita P. Panteriori of RDO 25A, Plaridel, Bulacan, recommending the approval of the transfer of registration of petitioner to Bulacan. Furthermore, petitioner even sent the letter dated June 16, 2017 addressed to OIC-Revenue District Officer Vicente P. Gamad of RDO 36,[53] requesting that all letters to petitioner in relation to the LOA be addressed and delivered to its office address at Bulacan.

Thus, all communications from respondent to petitioner, including the subject PAN and FAN, should have already been sent or mailed to the latter's address in Bulacan.

Contrary to the assertion of respondent, petitioner cannot be faulted for indicating its Palawan address in its Annual ITR for taxable year 2014 filed on April 13, 2015, together with its *Notes to Financial Statements*. This is so because petitioner is still required to file the said tax return with, and pay taxes to, RDO No. 36 (Palawan), notwithstanding its transfer to RDO No. 25A (Bulacan). This is consistent with Section 10(5) of RR No. 7-2012[54], which reads:

> "SECTION 10. *TRANSFER OF REGISTRATION.* – In case a registered person transfers his registered address to a new location, it shall be his duty to inform the BIR district office where he is registered of such fact by filing the prescribed BIR Form specifying therein the complete address where he intends to transfer.
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> 5. *Filing of Tax Returns* – **The filing of tax returns and payment of taxes to the new BIR district office shall commence following the issuance of the new COR. The new BIR district office shall be responsible for notifying the taxpayer concerned that the transfer of registration has already been completed.**" *(Emphasis added)*

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[52] Exhibit "P-5", Docket, pp. 209 to 210; TSN at the hearing held on October 7, 2019, pp. 12 to 14.
[53] Exhibit "P-6", Docket, p. 211.
[54] SUBJECT: Amended Consolidated Revenue Regulations On Primary Registration, Updates, And Cancellation

Here, as of the filing of the subject Annual ITR, there is no indication that RDO No. 25A had already issued the new "COR" or Certificate of Registration in favor of petitioner. Thus, the filing thereof should still be with RDO No. 36. Correspondingly, it would be reasonable to still indicate the former address of petitioner in Palawan in its Annual ITR for taxable year 2014, because that it is where the same tax return was being filed and the corresponding tax was being paid. After all, as already established, petitioner has already informed RDO No. 36 of its intention to transfer, and the fact of the recommendation made by RDO No. 25A of the approval of such transfer of, its business address. Such being the case, the indication of petitioner's former address in the said Annual ITR and *Notes to Financial Statements* is of no consequence, insofar as the subject income tax assessment is concerned.

***Respondent's failure to prove that the subject PAN and FLD/FAN were received by petitioner renders the subject income tax assessment void, for violation of petitioner's right to due process.***

Section 228 of the NIRC of 1997 reads:

> "Section 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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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and

automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

**The taxpayer 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.

xxx xxx xxx." *(Emphases added)*

Based on the foregoing provision, as a rule, when the Commissioner of Internal Revenue or his/her duly authorized representative finds that proper taxes should be assessed, the concerned taxpayer must first be notified of the respondent's findings, through a preassessment notice or a PAN. Furthermore, the said taxpayer is required to be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Implementing the above-quoted Section 228, Section 3 of RR No. 12-99[55], as amended by RR No. 18-2013[56], provides, in part, as follows:

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[55] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[56] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

"SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***

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

3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment.** It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.2 ***Exceptions to Prior Notice of the Assessment.*** — Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright.

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — **The Formal Letter of Demand <u>and</u> Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative.** The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX 'B' hereof).

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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:**

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(iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

**The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person**/barangay official/ professional courier service company **who received the same and such other relevant information. The registry receipt issued by the post office** or the official receipt issued by the professional courier company **containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**

xxx xxx xxx." *(Emphases and underscoring added)*

On the basis of the foregoing provisions, **part of the due process requirement in the issuance of a deficiency tax assessment** is the issuance and service of both PAN and FLD/FAN to the concerned taxpayer. Furthermore, service through registered mail of the PAN and FLD/FAN should be *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction; and it is required that the "[t]*he server shall accomplish the bottom portion of the notice"* and *"shall also make a written report under oath before a Notary Public or any person authorized to administer oath*[s] *under Section 14 of the* ✓

*NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information."*

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[57] the Supreme Court said:

> **"<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
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> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. <u>Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity</u>.**
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> **The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. <u>Section 3.1.2[58] of Revenue Regulation No. 12-99 requires the Preliminary</u>** *jr*

[57] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[58] Now, the above-quoted **Section 3.1.1**, RR No. 12-99, as amended by RR No. 18-2013.

**Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4[59] requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** xxx.

**'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.

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**The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notice, and Collection Letter null and void, and of no force and effect.**

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[60] this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void.** This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed

[59] Now, the above-quoted **Section 3.1.3**, RR No. 12-99, as amended by RR No. 18-2013
[60] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division]

> 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. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*,[61] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for <u>failure to inform the taxpayer of the law and the facts on which the assessment was made</u>**, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[62] this Court ruled, among others, that **the taxpayer was deprived of due process when the Commissioner failed to issue** a notice of informal conference and **a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.**

**Compliance with strict procedural requirements must be followed in the collection of taxes** as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[63]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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[61] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[62] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].
[63] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, one of the due process requirements in the issuance of tax assessments is that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD/FAN. In case respondent fails to observe, *inter alia*, the said requirement, it shall have the effect of rendering the subject deficiency tax assessment void, and of no force and effect, since such failure violates the due process rights of the concerned taxpayer.

As a corollary, in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.* ("*GJM* case"),[64] the Supreme Court ruled as follows:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. **It has been settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**

[64] G.R. No. 202695, February 29, 2016.

> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative**. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved**. Mere notations made without the taxpayer's intervention, notice of control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is clear that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was *actually* received by the addressee.

In this case, petitioner directly denies having received the subject PAN and FLD/FAN. Thus, the burden of proving the *actual* receipt of the same lies with respondent.

To prove service of the subject PAN and FLD/FAN by registered mail, respondent offered the following exhibits,[65] to wit:

| Exhibit | Description | Purpose |
|---|---|---|
| "R-4"[66] | Registry Receipt No. RD 878 792 247 ZZ dated 4-5- | To prove that the Preliminary Assessment Notice (PAN) dated 03-27-18 was mailed to petitioner at its registered address 42 Manga Avenue, Poblacion, |

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[65] Respondent's *Formal Offer of Evidence*, Docket, at pp. 297 and 298.
[66] Docket, p. 303.

| | | |
|---|---|---|
| | 18 | Narra, Palawa as evidenced by Registry Receipt No. RD 878 792 247 ZZ |
| "R-8"[67] | Registry Receipt No. RD 785 304 675 ZZ dated 4-16-18 | To prove that the Final Assessment Notice/Formal Letter of Demand dated 04-13-18 was mailed to petitioner at its registered business address 42 Manga Avenue, Poblacion, Narra, Palawa as evidenced by Registry Receipt No. RD 785 304 675 ZZ. |

Thus, it can be inferred from the foregoing that the only evidence adduced by respondent in proving the fact of mailing of the subject PAN and FLD/FAN are Registry Receipts purportedly issued by the Philippine Postal Corporation.

Unfortunately, the said evidence hardly suffice to prove that the said notices were indeed **served and received** by petitioner or by any of its authorized representative/s, pursuant to the above-mentioned rules. The said Registry Return Receipt merely proved the fact of mailing,[68] and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented that the said PAN and FLD/FAN were actually served and received by petitioner or by any of its authorized representative. Particularly, there is no indication, in the subject Registry Return Receipts, that the signature appearing therein refer to petitioner or its authorized representative. On this matter, the case of *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*[69] (*T Shuttle* case) is on point, to wit:

> "As ruled by the CTA *En Banc,* the **CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, <u>it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives</u>.** It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.

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[67] Docket, p. 304.
[68] Refer to *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, supra.
[69] G.R. No. 240729, August 24, 2020.

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> **The Court sees no reason to set aside the findings of the CTA *En Banc*.** 'It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, has accordingly developed an exclusive expertise on the resolution [of tax problems,] unless there has been an abuse or improvident exercise of authority.' xxx." *(Emphasis added)*

As already intimated, while the subject Registry Receipts respectively indicate a signatory, there is no indication that the latter are petitioner's duly authorized representative. Thus, the said document cannot be treated as proof of the actual receipt of the subject PAN and FLD/FAN by petitioner or its duly authorized representative.

Furthermore, it is noteworthy that contrary to the rules enunciated under the above-quoted Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, the following required information or document is lacking or apparently not complied with, to wit:

1) An instruction to the Postmaster to return the mail to the sender after ten (10) days, if the subject notice is undelivered;
2) Sufficiently identifiable details of the transaction in the Registry Receipts;
3) The accomplishment by the server of the bottom portion of the subject notice; and
4) The written report of the server, under oath, setting forth the manner, place and date of service, the name of the person who received the same and such other relevant information.

Such being the case, it is clear that respondent, not only failed to prove that petitioner actually received the subject PAN and FLD/FAN, it likewise neglected to show compliance with the requirements under its own rules and regulations. *gr*

Correspondingly, due process was not accorded to petitioner in the issuance of the subject PAN and FLD/FAN, pursuant to Section 228 of the NIRC of 1997, and Section 3.1 of RR No. 12-99, as amended by RR No. 18-2013. Such being the case, the said PAN and FAN/FLD are void. Thus, petitioner cannot be considered as a delinquent taxpayer to justify respondent's issuance of the PCL dated October 23, 2018 and FNBS dated November 14, 2018.

In any event, as this Court sees it, there is another reason to nullify the subject FLD/FAN.

***The period to assess the subject deficiency income tax for taxable year 2014 has already prescribed.***

Section 203 of the NIRC of 1997 provides for the three-year period of limitation within which taxes may be assessed. The said provision states:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* - **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.
>
> For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. *(Emphasis supplied)*

Section 203 of the NIRC mandates the government to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[70] Hence, an assessment notice

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[70] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

issued after the three-year prescriptive period is no longer valid and effective.[71]

To resolve whether the assessment has already prescribed, it is necessary to determine the period of filing of the return of the tax being assessed.

As already stated, petitioner is being assessed of deficiency income tax for taxable year 2014.[72]

In accordance with Section 77(B) of the NIRC of 1997, the Annual ITR is due to be filed on or before April 15 of the following calendar year or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be, *viz*:

> "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
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> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year.
>
> **The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.**" *(Emphasis added)*

Records show that petitioner filed its Annual ITR for taxable year 2014 on April 6, 2015 through respondent's electronic filing and payment system (eFPS); and a hard copy thereof was submitted to BIR RDO 36 on April 13, 2015.[73] Since the filing of the said Annual ITR was done prior to the deadline, the three (3)-year prescriptive period should be reckoned from April 15, 2015, being the later date, pursuant to the above-quoted Section 203. Thus, counting three (3)

[71] *Ibid.*
[72] Exhibits "R-5", "R-6" "R-7", and "R-7-A", BIR Records, pp. pp. 405 to 406, and 394 to 397.
[73] Exhibits "P-10" and "P-11" and "R-11", Docket, pp. 219 to 226, 227 and 305 to 312, respectively; TSN dated October 7, 2019, p. 7.

years from the said later date, the period to assess the subject income tax assessment is until **April 15, 2018**.

*Apropos*, it has already been settled that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer within said period; and that receipt thereof by the taxpayer within the prescriptive period is not necessary.[74]

In this case, however, based on respondent's evidence (*i.e.*, the Registry Receipt No. RD 785 304 675 ZZ dated 4-16-18),[75] the subject FLD/FAN was mailed only on **April 16, 2018**, or a day after the lapse of the three (3)-year prescriptive period. Clearly, then, the subject deficiency income tax assessment is void, since the same was mailed beyond the said prescriptive period.

***The subject compromise penalty may not be validly imposed.***

Anent the imposition of compromise penalty in the amount of ₱25,000.00,[76] considering that the subject income tax assessment is void, as above discussed, the same is not proper. Nevertheless, even granting that the said tax assessment may be considered as valid, the imposition of compromise penalty cannot be sustained. It must be stressed that a compromise is, by its nature, mutual in essence.[77] It implies agreement. One party cannot impose it upon the other.[78] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[79] Considering that there is no indication that petitioner consented to the subject compromise penalty, the same may not be validly imposed.

With the foregoing disquisitions, the Court finds it no longer necessary to discuss the other issues raised by the parties. *ju*

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[74] *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.
[75] Exhibit "R-8", Docket, p. 304.
[76] Exhibit "R-6", BIR Records, p. 404.
[77] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[78] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[79] Refer to Part III.5, Revenue Memorandum Order No. 19-2007.

**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject income tax assessment, including the imposed compromise penalty, for taxable year 2014, in the aggregate amount of ₱2,947,550.37 are declared as **INVALID**, and therefore, is **CANCELLED** and **SET ASIDE**.

Moreover, the PCL dated October 23, 2018 and FNBS dated November 14, 2018 issued against petitioner are likewise **CANCELLED** and **SET ASIDE.**

**SO ORDERED.**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**I CONCUR:**

**JEAN MARIE A. BACORRO-VILLENA**
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.

**JUANITO C. CASTAÑEDA, JR.**
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