REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

GRAND GEO SPHERES CONSTRUCTION CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9891

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 11 2023
2:34 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This is a *Petition for Review* filed by petitioner pursuant to Section 7 (a)(1) of Republic Act (RA) No. 1125,[1] as amended by RA No. 9282,[2] and Section 3(a)(1), Rule IV of the Revised Rules of the Court of Tax Appeals. Petitioner is seeking to reverse and set aside the *Demand Before Suit* dated May 7, 2018 issued by respondent Commissioner of Internal Revenue for alleged deficiency income tax and value-added tax (VAT) in the total amount of ₱8,205,711.61, including interest, for taxable year 2011, for being contrary to the facts, applicable laws, rules and regulations, jurisprudence, and recognized authorities.[3]

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[1] AN ACT CREATING THE COURT OF TAX APPEALS.
[2] 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.
[3] Statement of the Case, Pre-Trial Order, Docket, p. 178.

THE PARTIES

Petitioner Grand Geo Spheres Construction Corp. is a domestic corporation duly organized and existing under Philippine laws, with principal office at the 12 South Zuzuarregui Street, Old Balara, Quezon City.[4]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto, as provided by law. Respondent holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS OF THE CASE

On January 19, 2012, respondent issued electronic *Letter of Authority* (LOA) No. 201000086482 dated 19 January 2012, informing petitioner that respondent will examine its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2011 to December 31, 2011.[6]

Thereafter, on June 30, 2018, petitioner's Corporate Secretary Veronica M. Bautista found in her residential mail box a copy of respondent's *Demand Before Suit*, ordering petitioner to pay deficiency taxes amounting to ₱8,205,711.61, plus increments that have accrued until actual date of payment.[7]

On July 26, 2018, petitioner filed the present *Petition for Review*[8] asking the Court to render judgment reversing and setting aside the Demand Before Suit of respondent and declaring petitioner not liable for any deficiency taxes for taxable year 2011.

On January 9, 2019, respondent filed his Answer.[9] Respondent states that the Court has no jurisdiction over the case; that petitioner failed to protest the assessments, thus, petitioner does not have the right to elevate the case to the Court; that since petitioner failed to exhaust administrative remedies granted by law before the case may be elevated to the Court of Tax Appeals, this Court cannot acquire jurisdiction over the subject matter of the case; that there is factual and legal basis to support the assessment made against petitioner; that the revenue officers who conducted the assessment established that petitioner had Income Tax and Value-Added Tax deficiencies amounting to Php8,205,711.61 and that attachments detailing why petitioner incurred a

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[4] Par. 2.1, Admitted Facts/Documents, *Joint Stipulation of Facts and Simplification of Issues* (JSFSI), Docket, p. 167.
[5] Par. 2.2, Admitted Facts/Documents, JSFSI, Docket, p. 167.
[6] Par. 2.3, Admitted Facts/Documents, JSFSI, Docket, p. 167.
[7] Par. 2.4, Admitted Facts/Documents, JSFSI, Docket, p. 167; BIR Records (Exhibit "R-8"), p. 241.
[8] Docket, pp. 12 to 21.
[9] Docket, pp. 58 to 63.

deficiency were included in the Formal Letter of Demand (FLD) sent to petitioner; and that there are factual and legal bases to support the assessment made against petitioner since the FLD detailed the discrepancies of petitioner which led to its tax liabilities.

In the Resolution dated January 25, 2019,[10] the Court ordered the parties to immediately proceed, and to personally appear, or through their authorized representative, before Ms. Avigail B. Sanchez, Mediation Staff Assistant, at the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), with or without the presence of their counsels for mediation proceedings. However, the parties decided not to have their case mediated by the PMC-CTA.[11]

The Pre-Trial Conference was initially set on June 11, 2019.[12] However, the said Conference was reset to, and held on, September 3, 2019.[13] Prior thereto, petitioner's *Pre-Trial Brief* was submitted on June 6, 2019,[14] while *Respondent's Pre-Trial Brief* was filed on June 7, 2019.[15]

Respondent transmitted to this Court the *BIR Docket* of this case, consisting of one (1) folder, with two hundred forty-one (241) pages, on September 3, 2019.[16]

On October 4, 2019, the parties filed their *Joint Stipulation of Facts and Simplification of Issues* (JSFSI).[17] In the Resolution dated October 9, 2019,[18] the Court approved the said JSFSI, and deemed the termination of the Pre-Trial. The Pre-Trial Order dated November 5, 2019 was thereafter issued.[19]

Trial then ensued.

Petitioner presented its documentary and testimonial evidence. It offered the testimony of Ms. Veronica M. Bautista,[20] petitioner's Corporate Secretary.

On September 24, 2020, petitioner filed its *Formal Offer of Evidence*.[21] Respondent failed to file a comment thereon.[22] In the Resolution dated January 4, 2021,[23] the Court admitted petitioner's offered exhibits.

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[10] Docket, pp. 67 to 68.
[11] *No Agreement To Mediate* dated February 4, 2019, Docket, p. 70.
[12] Resolution dated February 21, 2019, Docket, pp. 77 to 78.
[13] Notice of Resetting dated June 10, 2019, Docket, p. 111; Minutes of the hearing held on, and Order dated, September 3, 2019, Docket, pp. 139 to 142.
[14] Docket, pp. 93 to 100.
[15] Docket, pp. 108 to 110.
[16] *Compliance* dated September 22, 2020, Docket, pp. 164 to 166.
[17] Docket, pp. 166 to 171.
[18] Docket, pp. 175 to 176.
[19] Docket, pp. 178 to 183.
[20] Exhibit "P-2", Docket, pp. 101 to 105; Minutes of the hearing held on, and Order, dated September 16, 2021, Docket, pp. 202 to 204.
[21] Docket, pp. 205 to 207.

Testimonial and documentary evidence were likewise presented by respondent. The latter offered the testimony of Revenue Officer (RO) Charlaraine G. Dytioco.[24]

On March 29, 2021, respondent's *Formal Offer of Documentary Evidence* was filed via electronic mail.[25] Petitioner failed to file its comment to the said pleading.[26] In the Resolution on September 22, 2021,[27] the Court admitted the exhibits offered by respondent.

On December 6, 2021, respondent's *Memorandum* was filed;[28] and on February 17, 2022, the *Memorandum For the Petitioner* was submitted.[29]

The present case was deemed submitted for decision on March 1, 2022.[30]

THE ISSUES RAISED BY THE PARTIES

The parties submitted the following issues for this Court's resolution, to wit:

> "3.1. Whether or not petitioner is liable for deficiency income tax and value-added tax for taxable year 2011 including twenty percent interest (20%); and
>
> 3.2. Whether or not there was appropriate service upon Petitioner of assessment notices and demand to pay from Respondent."[31]

Petitioner's arguments:

Petitioner argues that respondent has no factual and legal basis to assess petitioner of deficiency taxes for taxable year 2011; that the LOA was not validly served to petitioner when it was assessed deficiency taxes; and that petitioner was deprived of due process when it did not receive respondent's *Preliminary Assessment Notice* (PAN), *Final Assessment Notice* (FAN), and FLD.

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22 Records Verification Report dated November 9, 2020 issued by the Judicial Records Division of this Court, Docket, p. 212.
23 Docket, pp. 219 to 220.
24 Exhibit "R-9", Docket, pp. 247 to 255; Minutes of the hearing held on, and Order dated, March 9, 2021, Docket, pp. 273 to 275.
25 Docket, pp. 279 to 287.
26 Records Verification Report dated June 29, 2021 issued by the Judicial Records Division of this Court, Docket, p. 323.
27 Docket, pp. 325 to 326.
28 Docket, pp. 327 to 333.
29 Docket, pp. 334 to 357.
30 Resolution dated March 1, 2022, Docket, p. 361.
31 Simplification of Issues, JSFSI, Docket, p. 168.

Respondent's counter-arguments:

Respondent claims that petitioner is liable for deficiency income tax and VAT for taxable year 2011, including twenty percent (20%) interest; and that the requirement of due process was properly complied with in issuing the PAN and FAN/FLD.

THE COURT'S RULING

This Court has jurisdiction to entertain the present appeal.

Respondent Commissioner claims that this Court has no jurisdiction over the case. He argues that petitioner failed to file a protest on the assessments. Thus, petitioner does not have the right to elevate this case to the Court. Since petitioner failed to exhaust administrative remedies, the Court cannot acquire jurisdiction over the subject matter of the case.

Section 7(a)(1) of Republic Act (RA) No. 1125,[32] as amended by RA No. 9282,[33] provides 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 **<u>other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue</u>;**" *(Emphases and underscoring supplied)*

Based on the foregoing provision, this Court has jurisdiction over the decisions of respondent in cases, not only those *"involving disputed assessments, and refunds of internal revenue taxes, fees or other charges, penalties in relation thereto"*, but also regarding *"other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."*

[32] AN ACT CREATING THE COURT OF TAX APPEALS.
[33] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[34] the Supreme Court held as follows, to wit:

> "**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 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.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*,[35] we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*,[36] the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." *(Emphasis supplied)*

The foregoing jurisprudential pronouncements confirm that this Court's appellate jurisdiction is not limited to cases involving decisions of respondent on matters relating to assessments or refunds; and that it is clear and simple that the wordings employed by the law are to the effect that the said appellate jurisdiction covers other cases that arise out of the NIRC or related laws administered by the BIR.

In this case, it is apparent that the issuance of the Demand Before Suit arose out of respondent's implementation of the provisions on the assessments of the National Internal Revenue Code (NIRC) of 1997, as amended. Such being the case, this Court has jurisdiction to take cognizance of the present *Petition for Review*.

Anent the timeliness of the Petition, a taxpayer adversely affected by a decision or inaction of the CIR should appeal to this Court within thirty (30) days from receipt of the decision or after the expiration fixed by law for action as referred to in Section 7(a)(1) of the Tax Code, as amended.[37] Thus, petitioner has thirty (30) days from receipt of the Demand Before Suit to file a Petition for Review. Since petitioner received a copy of the Demand Before Suit on

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[34] G.R. No. 162852, December 16, 2004.
[35] 111 Phil. 197 (1961).
[36] G.R. No. 115712, February 25, 1999.
[37] Republic Act No. 1125, as amended.

June 30, 2018, it has until July 30, 2018 within which to file the instant Petition for Review.

Hence, the present Petition for Review filed on July 26, 2018, was filed on time.

The LOA was not properly served to petitioner or its duly authorized representative.

Petitioner claims that there was no validly served LOA when it was assessed of deficiency taxes.

After consideration, the Court resolves to agree with petitioner.

Relative to the service of the LOA, respondent's witness, RO Charlaraine G. Dytioco, on cross-examination, testified as follows:

> "Atty. Apdua:
>
> Ms. Witness, in Question No. 6, you mentioned that you served the Letter of Authority marked as Exhibit R-1 to petitioner's address as shown by the exhibits **there is a <u>Lynette Juvida</u> who received the Letter of Authority, will you confirm the recipient <u>Lynette Juvida</u> if she was authorized by the petitioner to receive the Letter of Authority?**
>
> A: **<u>Yes, Sir</u>.**
>
> Q: If **<u>Lynette Juvida</u>** present proof of authority, is she received the Letter of Authority *(sic)*?
>
> A: Yes, **<u>she</u> presented her ID**.
>
> Q: Do you have a copy of the said ID?
>
> A: I have no copy.
>
> Q: As of now there is no document that would show that she is authorized to receive the Letter of Authority?
>
> A: Okay."[38] *(Emphases and underscoring added)*

[38] Transcript of Stenographic Notes at the hearing held on March 9, 2021, pp. 8 to 9.

Based on the foregoing, it is clear that RO Charlaraine G. Dytioco has no corroborating evidence to support her testimony that the person who received the LOA was authorized by petitioner.

Moreover, this Court further finds that the testimony of the said witness lacks credibility. This is so because she confirmed that a certain "*Lynette Juvida*" is the person who received the LOA. However, upon cross-referencing the electronic LOA No. 201000086482 dated 19 January 2012—the very same evidence presented by respondent,[39] the same is to the effect that it was received by a certain "*Nonette Comida*", and not a "*Lynette Juvida*".

Such being the case, this Court cannot ascribe probative value on the testimony of RO Charlaraine G. Dytioco, and thus, is not convinced that the subject LOA was, in fact, served to petitioner.

There was no proof that the subject PAN, FAN, and FLD were received by petitioner, thereby depriving the latter of its right to due process.

Petitioner claims that it did not receive the PAN, PAN, FLD and Demand Before Suit and that respondent did not serve the said notices to any of its authorized representative.

An assessment contains not only a computation of tax liabilities, but also a demand for payment within the prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine remedies thereon, **due process requires that it must be <u>served on and received</u> by the taxpayer.**[40] 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.[41]

Section 3.1.6 of Revenue Regulations (RR) No. 12-99,[42] as amended by RR No. 18-2013,[43] reads, in part, as follows:

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

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[39] Exhibit "R-1", Docket, p. 288. Refer also to the *BIR Tax Docket* (Exhibit "R-8"), p. 1.
[40] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corp., et al.*, G.R. No. 128315, June 29, 1999.
[41] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[42] 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
[43] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

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

xxx xxx xxx

3.1.6 ***Modes of Service.*** – **The notice (<u>PAN/FLD/FAN</u>/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**

xxx xxx xxx

(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 **<u>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</u>.**

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

Based on the foregoing provisions, one of the modes of service of the PAN, FLD, and FAN, is by sending the same through a reputable professional courier service. In such case (as in other cases), the server shall accomplish the bottom portion of the same notice. Moreover, 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.

In his Answer, respondent states that both the Preliminary Assessment Notice dated 15 December 2014 and the Formal Letter of Demand with Assessment No. 39-B136-11 dated 8 January 2015 were sent to the Petitioner via Private Courier (LBC) on 16 December 2014 (Tracking No. 126024393231) and 8 January 2015 (Tracking No. 125734543803), respectively.

In connection with the service of the subject PAN, FLD and FAN, respondent offered the following exhibits,[44] to wit:

Exhibit	Description	Purposes
"R-6"[45]	PAN with *Details of Discrepancy*, dated December 15, 2014	• To prove that the PAN was issued and duly served to petitioner through substituted service, pursuant to RR No. 18-2013. • To prove the factual and legal bases for the issuance of the assessment. • To prove that petitioner was given an opportunity to refute the findings of the BIR. • To prove that respondent complied with the audit procedures required under Section 228 of the Tax Code of 1997, as amended, and its implementing RR No. 12-99, as amended. • To form part of the testimony of RO Charlaraine G. Dytioco as witness in this case.
"R-7"[46] "R-7-1"[47] "R-7-2"[48]	FLD No. 39-B136-11, dated January 8, 2015, with *Details of Discrepancies.* Assessment Notice Demand No. 39-B136-11 for Income Tax, dated January 8, 2015. Assessment Notice Demand No. 39-	• To prove that the FLD and Assessment Notices were issued and duly served to petitioner through substituted service, pursuant to RR No. 18-2013. • To prove the factual and legal bases for the issuance of the assessment. • To prove that the assessments were issued in accordance with the provisions of law. • To prove that petitioner was

[44] Respondent's *Formal Offer of Documentary Evidence*, Docket, pp. 280 to 287.
[45] Docket, pp. 297 to 298.
[46] Docket, pp. 299 to 301.
[47] Docket, p. 302
[48] Docket, p. 303.

	B136-11 for VAT, dated January 8, 2015.	given an opportunity to refute the findings of the BIR. • To prove that respondent complied with the audit procedures required under Section 228 of the Tax Code of 1997, as amended, and its implementing Revenue Regulations No. 12-99, as amended. • To prove that petitioner was accorded due process in the investigation of its internal revenue tax liabilities. • To form part of the testimony of RO Charlaraine G. Dytioco as witness in this case.

To further prove that the notices to petitioner were duly served by respondent and duly received by petitioner, respondent offers in evidence the *BIR Tax Docket of Petitioner relative to deficiency taxes for taxable year 2011* (Exhibit "R-8"), which contains, among others, the *Affidavits of Service of Preliminary Assessment Notice/Final Assessment Notice* executed by ROs Charlaraine G. Dytioco and Nora U. Flores.[49]

Relative to the foregoing documents, RO Charlaraine G. Dytioco testified as follows:

> "Q24. What are the contents of the Preliminary Assessment Notice and **how was it served to petitioner?**
>
> A: The Preliminary Assessment Notice (PAN) contains facts and the law upon which the assessment is based. It also contains a demand to pay the deficiency tax liabilities stated therein. I tried to personally serve the PAN to petitioner at its registered address, however, petitioner's representatives refused to receive the same since they were not authorized to do so. **Since no authorized person was available to receive the PAN, I resorted to sending the PAN through licensed courier service (LBC) in order to ensure immediate receipt thereof.**
>
> xxx xxx xxx
>
> Q29. **How was the FLD/FAN served to petitioner?**

[49] BIR Docket (Exhibit "R-8"), pp. 137 and 150, respectively.

A: Similar with the manner of service of the PAN, I attempted to serve the FLD/FAN to petitioner thru personal service at its registered address. However, petitioner's representatives refused to receive the same since they were not authorized to do so. **Since no authorized person was available to receive the FLD/FAN, I resorted to sending the PAN through licensed courier service (LBC) in order to ensure immediate receipt thereof.**"[50] *(Emphases added)*

Since petitioner denied receipt of the notices, the burden is shifted to respondent to prove by competent evidence that petitioner indeed received the assessment notices. However, the totality of the documentary and testimonial evidence, do not suffice to prove that the BIR properly served the PAN and FLD/FAN. It was not established that the notices were issued and sent to petitioner. The authority of the persons who received the notices were not authorized by plaintiff's witnesses. Lastly, there is no written report, certification, or any other pertinent document from the private courier (LBC Express) as to the service of the PAN, FAN and FLD.

As already pointed out, part of the process of serving notices to taxpayers is that the server must accomplish the bottom portion of the notice. However, the subject PAN, FLD, and FAN, show that the bottom thereof, respectively, remained unaccomplished [*i.e.*, those pertaining to the following information: (1) printed name & signature of the person who received the notice; (2) the person's designation; and (3) date of receipt].[51] Needless to state, the said respective bottom portion should be accomplished, so as to determine whether the person or persons who received the notice were duly authorized by the taxpayer, and when the notice was received by the latter.

While the official receipts of the professional courier company, *i.e.*, LBC Express, are respectively attached to the case docket, the same do not contain sufficiently identifiable details of the transaction, as likewise required under the aforequoted provisions of RR No. 12-99, as amended by RR No. 18-2013. Particularly, the said official receipts do not specifically indicate what is being sent to petitioner, for they merely state "DOCUMENTS".[52] The general reference to "DOCUMENTS" may mean any document, other than the subject PAN, FLD, and FAN.

It should be emphasized that the service of the PAN and the date of receipt thereof is highly significant. It is only upon the lapse of **fifteen (15) days from such receipt** will the concerned taxpayer be considered in default, calling for the issuance of the FLD/FAN, pursuant to Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013, to wit:

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[50] Exhibit "R-9", Docket, pp. 251 and 252, respectively.
[51] Exhibits "R-6", "R-7", "R-7-1", and "R-7-2", Docket, pp. 297 to 303. Refer also to the *BIR Tax Docket* (Exhibit "R-8"), pp. 124 to 129, and 133 to 135, respectively.
[52] Exhibits "R-6", and "R-7-1", Docket, pp. 297 to 302, respectively. Refer also to the *BIR Tax Docket* (Exhibit "R-8"), pp.129 and 135, respectively.

> "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 <u>fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default</u>, 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." *(Emphases and underscoring added)*

And as for the service of the FLD/FAN, the date of receipt thereof is likewise highly significant, because it will be from which the 30-day to file a protest will be reckoned, in accordance with Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, to wit:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or

jurisprudence on which the assessment is based, *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).

3.1.4 *Disputed Assessment.* – **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** xxx." *(Emphases and underscoring added)*

Thus, without a clear indication as to who received the subject PAN, FLD, and FAN, and whether the person who received the same is authorized to do so, as well as the respective date of receipt thereof, this Court cannot conclude that respondent or the BIR observed the due process requirements in the issuance of deficiency tax assessments, under RR No. 12-99, as amended by RR No. 18-2013.

Accordingly, this Court finds that respondent failed to prove by competent evidence that there was proper service of the notices and that the same were indeed received by petitioner.

It should be stressed that due process should be accorded to petitioner in the issuance of the subject PAN, FLD, and FAN, specifically under the earlier quoted Sections 3.1.1, 3.1.3, and 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, and Section 228 of the National Internal Revenue Code (NIRC) of 1997, to wit:

"SEC. 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:** xxx

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.

xxx xxx xxx." *(Emphases added)* N

Based on the said provisions, part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the PAN and FLD/FAN.

Considering that respondent was unable to present substantial evidence to prove that the subject PAN, FLD, and FAN, were properly served and received by petitioner or by its authorized representative/s, then there is no valid assessment to speak of in this case.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[53] the Supreme Court ruled that:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. 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.**
>
> **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 defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**" *(Emphases and underscoring added)*

In view of the violation of petitioner's right to due process provided under Section 228 of the NIRC of 1997, and RR No. 12-99, as amended by RR No. 18-13, the subject PAN, FLD, and FAN, are considered void. The subject deficiency tax assessments then bear no valid fruit,[54] and respondent's *Demand Before Suit* dated May 7, 2018 must not be given any effect. It then becomes unnecessary to address the remaining issues and arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The deficiency income tax and VAT

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[53] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[54] Refer to *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

assessments, in in the total amount of ₱8,205,711.61, including interest, for taxable year 2011, are **VOID**.

Accordingly, respondent's *Demand Before Suit* dated May 7, 2018 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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