

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB NO. 2612
INTERNAL REVENUE, (CTA CASE NO. 10044)
Petitioner,

Present:

-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, JJ.

ALTIMAX BROADCASTING
CO., INC.,
Respondent.

Promulgated:

OCT 03 2023

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is the *Petition for Review* filed by the Commissioner of Internal Revenue (CIR), under Section 18 of Republic Act No. (RA) 1125,¹ as amended, seeking

¹ R.A. 1125, as amended by R.A. 9282, Section 18:

"SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

the reversal of the October 6, 2021 Decision² and the April 21, 2022 Resolution³ of the Court of Tax Appeals (CTA) Second Division.

The relevant portion of the assailed *decision* states:

“Consequently, in view of the violation of petitioner’s right to due process provided under Section 228 of the NIRC of 1997, as amended, and the pertinent provisions of RR No. 12-99 and RR No. 18-2013, the subject PAN and FAN/FLD are void. As such, the subject tax assessments bear no valid fruit, and the WDL dated January 31, 2019 must not be given any effect. In view of this finding, it becomes unnecessary to address respondent’s issue of whether petitioner is liable to pay the deficiency tax assessments.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the *Warrant of Distraint and/or Levy* dated January 31, 2019 issued against petitioner is **WITHDRAWN** and **SET ASIDE**.

Moreover, the PAN dated October 6, 2016 and FLD/FAN dated October 27, 2016 issued against petitioner, for taxable year 2013, are **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED.”

The dispositive portion of the assailed *resolution* reads:

“**WHEREFORE**, in the light of the foregoing considerations, respondent’s *Motion for Reconsideration* (*Decision dated 06 October 2021*) is hereby **DENIED** for lack of merit.

SO ORDERED.”

The Parties

Petitioner is the duly appointed CIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the 1997 National Internal Revenue Code (1997 NIRC), as amended, and its implementing rules and regulations. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

Respondent Altimax Broadcasting Co., Inc. (Altimax / taxpayer) is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is a registered taxpayer of the BIR, Revenue Region No. 7,

² *Rollo*, pp. 15-32.

³ *Id.*, pp. 34-37.

Revenue District Office (RDO) No. 41, with Taxpayer Identification Number 272-993-967-000.⁴

The Facts

Proceedings Before the BIR

On September 1, 2014, the taxpayer physically transferred to its new address located in 3F Globe Telecom Tower 1, Pioneer Highlands corner Madison Streets, Mandaluyong City.⁵

On September 10, 2014, the taxpayer received *Letter of Authority* (LOA) No. 43A-2014-00000561 dated September 8, 2014, authorizing Revenue Officer (RO) Corazon L. Levardo and Group Supervisor (GS) Aurea Guevarra of Revenue District Office No. 43A-East Pasig to examine its books of accounts and other accounting records for all internal revenue taxes, for the period January 1, 2013 to December 31, 2013.⁶ However, the LOA still indicated the taxpayer's *old address* in Unit 507, The Taipan Place, F. Ortigas Jr. Road, San Antonio, Ortigas Center, Pasig City.⁷

On October 9, 2014, the BIR conducted an on-site audit at the taxpayer's *new address* in Mandaluyong City. But after this, the taxpayer claimed that it did not receive any correspondence from the BIR.⁸

Subsequently, in a *Memorandum of Assignment* dated October 6, 2016 and signed by Revenue District Officer Ramer D. Narvaez of Revenue District Office No. 43A-East Pasig,⁹ RO Wilfredo Pantino and GS Zaldy Dy were assigned for the service of the *Preliminary Assessment Notice* (PAN) dated October 6, 2016.¹⁰ GS Zaldy Dy tried to serve the PAN in the *old address* of the taxpayer in Pasig City and testified that it was no longer occupied by the taxpayer. Notably, the PAN bore the taxpayer's *old address* in Unit 507, The Taipan Place, F. Ortigas Jr. Road, San Antonio, Ortigas Center, Pasig City.¹¹ Since the new location of the taxpayer could not be determined, the PAN was still sent by registered mail¹² to the old Pasig City address.¹³

⁴ Decision, *Rollo*, p. 16.

⁵ *Transcript of Stenographic Notes*, October 7, 2019 Hearing, p. 9; *BIR Certificate of Registration*, Exhibit "P-2" and "R-1", Division Docket, p. 339.

⁶ Decision, *Rollo*, p. 16.

⁷ *Letter of Authority*, Exhibit P-3, Docket, p. 340; BIR Records, p. 25.

⁸ *Sworn Statement of Mr. James Kenneth Venta to Questions Propounded by Atty. Lee Realino F. Reyes*, Exhibit P-7, Docket, p. 244; *BIR Authority to Travel / Locator Slip dated October 9, 2014 dated October 9, 2014*, Exhibit "P-4", Docket, p. 342.

⁹ Exhibit R-1, BIR Records, p. 438.

¹⁰ Exhibit R-2, BIR Records, pp. 434-435.

¹¹ *Transcript of Stenographic Notes*, January 20, 2020 Hearing, pp. 8 and 13; Exhibit R-2, BIR Records, pp. 434-435.

¹² *Judicial Affidavit of Zaldy Dioscoro I. Dy, Revenue Officer III*, Exhibit "R-4", Docket, p. 369.

¹³ *Transcript of Stenographic Notes*, January 20, 2020 Hearing, pp. 8-9.

Thereafter, the docket was forwarded to the Assessment Division for the issuance of *Final Assessment Notice* (FAN) / *Formal Letter of Demand* (FLD).¹⁴ Again, the FAN and FLD both dated October 27, 2016 and carrying the Pasig City address, were sent by registered mail to the same old address in Pasig City.¹⁵

On January 31, 2019, the taxpayer received a *Warrant of Distraint and/or Levy* (WDL), for alleged deficiency income tax, VAT, and EWT liabilities, for taxable year 2013, in the total amount of Php18,903,909.58.¹⁶

Accordingly, on February 19, 2019, the taxpayer filed a letter with the BIR Revenue Region No. 7 manifesting that it did *not* receive a PAN and FAN, as required under Section 228 of the Tax Code, as implemented by BIR Revenue Regulations (RR) No. 12-99, as amended. It also requested the BIR to defer from any further action, in connection with the WDL, and to furnish it copies of the PAN and FAN, so that it is adequately informed of the items of assessment from which the alleged deficiency tax liabilities were based.¹⁷

Proceedings Before the Court of Tax Appeals (CTA) Second Division

Seeking further relief, the taxpayer filed a *Petition for Review (with Urgent Motion to Suspend Collection of Taxes and to Quash/Lift Warrant of Distraint and/or Levy)* on March 4, 2019 with the CTA.¹⁸

During the April 3, 2019 hearing for the *Motion to Suspend Collection of Taxes*, the taxpayer presented Mr. James Kenneth Venta, the Group Comptroller and Administrative Head of Bethlehem Holdings, Inc. and its subsidiaries including the taxpayer. It also orally offered Exhibits "P-6", "P-7", "P-8", "P-9" and "P-9-A", which were admitted, there being no objection from respondent. In the same hearing, the court *a quo* granted the taxpayer's *Motion for Suspension of Collection of Taxes*, subject to the posting of acceptable surety bond in the amount of Php18,903,909.58.¹⁹

On April 26, 2019, the CIR filed his Answer, raising certain special and affirmative defenses, to wit: (1) the court *a quo* has no jurisdiction over the petition, and the assessment had long become final, executory, and demandable; (2) the taxpayer failed to timely file a valid protest to the FAN, which were served to the taxpayer through registered mail at its address at *Unit 507 The Taipan Place F. Ortigas Jr., San Antonio, Ortigas Center, Pasig City*; (3) the taxpayer's transfer to its new address was approved only on November 7, 2016 as indicated in its Certificate of Registration; (4) granting without admitting that the taxpayer still had the right to elevate the instant case with the Court, it failed to elevate the

¹⁴ *Judicial Affidavit of Zaldy Dioscoro I. Dy, Revenue Officer III*, Exhibit "R-4", Docket, p. 369.

¹⁵ *Judicial Affidavit of Zaldy Dioscoro I. Dy, Revenue Officer III*, Exhibit "R-4", Docket, p. 370; Exhibits "R-3", "R-3-A", "R-3-B", "R-3-C" and "R-3-D", BIR Records, pp. 448-452; *Transcript of Stenographic Notes*, January 20, 2020 Hearing, pp. 11-13.

¹⁶ Decision, *Rollo*, p. 16.

¹⁷ *Id.*

¹⁸ *Id.*, p. 17.

¹⁹ *Id.*

same within thirty (30) days from the receipt of the WDL; and (5) as admitted by the taxpayer, it received the WDL on January 31, 2019 but the case was filed only on March 4, 2019.²⁰

Both parties' Pre-Trial Briefs were filed on May 31, 2019 and the Pre-Trial Conference was set on June 6, 2019.²¹

At the Pre-Trial Conference, the case was referred to mediation upon agreement of both parties. Thus, the court *a quo* ordered them to immediately proceed and personally appear or through their authorized representative at the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA), with or without the presence of their counsel/s.²²

However, the parties eventually decided not to mediate. Thus, the pre-trial was set anew, and was held, on August 29, 2019.²³

On September 27, 2019, the parties submitted their Joint Stipulation of Facts and Issues (JSFI). The Pre-Trial Order dated October 4, 2019 was then issued by the Court, which approved the said JSFI and terminated the pre-trial.²⁴

Trial for the main case then ensued.²⁵

The taxpayer presented its documentary and testimonial evidence. It again offered the testimony of Mr. James Kenneth Venta.²⁶

On October 14, 2019, the taxpayer filed its *Formal Offer of Evidence* to which the CIR failed to file his comment. In the Resolution dated November 21, 2019, the court *a quo* admitted all of the taxpayer's exhibits.²⁷

The CIR then presented his documentary and testimonial evidence. Specifically, he offered the testimony of RO Zaldy Dioscoro I. Dy.²⁸

On February 10, 2020, the CIR submitted the BIR Records to the court *a quo*.²⁹

On February 17, 2020, the CIR filed his *Formal Offer of Evidence* to which the taxpayer filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on February 24, 2020. In a *Resolution* dated June 15, 2020, the court *a quo* admitted all of respondent's exhibits and ordered the parties to file their respective memorandum, within thirty (30) days from receipt thereof.³⁰ ✓

²⁰ *Id.*

²¹ *Id.*

²² *Id.*, p. 18.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*, p. 19.

²⁹ *Id.*

³⁰ *Id.*

On July 17, 2020, the taxpayer filed its *Memorandum*. The CIR, however, failed to submit his memorandum.³¹

The present case was considered submitted for decision on October 12, 2020.³²

Finally, on October 6, 2021, the court *a quo* rendered a decision, which granted the petition, voided the assessment, cancelled the PAN, FAN and FLD and set aside the WDL.³³

Upon the CIR's *Motion for Reconsideration (Decision dated 06 October 2021)*, the court *a quo* denied the same in the Resolution dated April 21, 2022.³⁴

Proceedings Before the CTA En Banc

Aggrieved, the CIR filed a *Motion for Extension of Time to File Petition for Review* by licensed courier on May 11, 2022 and asked for an extension of fifteen (15) days from May 12, 2022 to file his *Petition for Review*.³⁵

In a Minute Resolution dated May 16, 2022, the Court *En Banc* gave the CIR until May 27, 2022 within which to file his petition.³⁶

On May 27, 2022, the CIR filed a *Petition for Review* before the Court *En Banc*.³⁷

On June 22, 2022, the Court *En Banc* issued a *Resolution*, which ordered the taxpayer to file a comment.³⁸

On July 11, 2022, the taxpayer filed its *Comment (Re: Petition for Review dated May 27, 2022)*.³⁹

On August 1, 2022, the Court *En Banc* issued a Resolution which noted the *Comment (Re: Petition for Review dated May 27, 2022)* and directed the parties to undergo mediation with the PMC-CTA.⁴⁰

On September 7, 2022, the parties through the PMC-CTA issued a *No Agreement to Mediate* stating that they decided to forego mediation.⁴¹

³¹ *Id.*

³² *Id.*

³³ *Rollo*, pp. 15-32.

³⁴ *Id.*, pp. 34-37.

³⁵ *Rollo*, pp. 1-2.

³⁶ *Rollo*, p. 3.

³⁷ *Id.*, pp. 4-12.

³⁸ *Id.*, pp. 43-44.

³⁹ *Id.*, pp. 45-52.

⁴⁰ *Id.*, pp. 55-56.

⁴¹ *Id.*, p. 57.

Finally, in a *Resolution* dated October 11, 2022, the Court submitted the case for decision.⁴²

The Issues

As a lone assignment of error, the CIR stated that the court *a quo* erred in ruling that the taxpayer's right to due process was violated.⁴³

The Arguments of the Parties

The CIR's Arguments

Petitioner CIR assails the decision and resolution of the court *a quo* on the grounds that:

- a. Due process, "as a constitutional precept, does not always and in all situations require a trial-type proceeding." It is satisfied when a person is notified of the charge against it and given an opportunity to explain and defend itself;⁴⁴ the essence of due process is simply to be heard, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of;⁴⁵ in *CIR v. Avon Products Manufacturing, Inc.*⁴⁶ the Supreme Court cited *Ang Tibay v. The Court of Industrial Relations* wherein it enumerated the fundamental requirements of due process that must be respected in administrative proceedings;⁴⁷ and,
- b. Since the PAN, FLD and the Assessment Notices "were duly served and received", respondent taxpayer was notified and given ample time and opportunity to protest the findings of the assessment. Therefore, clearly, "the examiner's assessment should be given full weight and credit" and the taxpayer is liable to pay the assessed deficiency taxes.⁴⁸

The Taxpayer's Arguments

Respondent taxpayer, on the other hand, asserts that:

- a. The CIR failed to observe the mandatory due process requirements laid down by Section 228 of the 1997 NIRC, as amended, and Revenue Regulation No. 12-99, as amended and the prevailing jurisprudence on the matter. Its right to be informed in writing of the alleged assessment

⁴² *Id.*, pp. 59-61.

⁴³ *Petition for Review*, Rollo, p. 7.

⁴⁴ *Id.*, p. 8

⁴⁵ *Id.*

⁴⁶ G.R. No. 201398-99, October 3, 2018.

⁴⁷ *Petition for Review*, Rollo, pp. 8-9.

⁴⁸ *Id.*, Rollo, pp. 9-10.

was violated when it did not receive a copy of the PAN, FAN, FLD and FDDA relative to the 2013 tax audit.⁴⁹

- b. Upon *direct denial* of the receipt of the PAN and FAN, the burden of proof that the mailed letter was in fact received by the addressee (taxpayer) was shifted to the sender (CIR); however, aside from the registry receipts presented by the CIR to prove that it has properly served the PAN and FAN, the CIR did *not* present *any other evidence* to establish that these were duly received,⁵⁰
- c. Lastly, in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, it was held that 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 the taxpayer's right to due process.⁵¹

The Ruling of the Court *En Banc*

The Court *En Banc* finds no cogent reason to set aside the Second Division's assailed decision and resolution.

At the outset, the taxpayer correctly observed that the petition is a mere reiteration of the previous arguments of the CIR.⁵²

In the assailed Resolution dated April 21, 2022, which denied the CIR's *Motion for Reconsideration (Decision dated 06 October 2021)*, the court *a quo* recapped its findings that the CIR not only failed to prove that the taxpayer actually received the PAN and FAN/FLD, but also failed to show compliance with the requirements based on its own rules and regulations on the proper service of the assessment notices:

“Notably, the arguments raised by respondent in the present motion are mere rehash of the same facts and issues which have already been thoroughly discussed in the assailed Decision.

To reiterate, part of the due process requirements in the issuance of tax assessments under Section 228 of the National internal Revenue Code of 1997, as implemented by Revenue Regulations (RR) No. 12-99, and amended by RR No. 18-2013, is that the concerned taxpayer must be informed in writing of the law and the facts upon which the assessment was made, and that the taxpayer be given the opportunity to respond to and contest the PAN and the FLD/FAN. ✓

⁴⁹ *Comment (Re: Petition for Review dated May 27, 2022)*, Rollo, p. 48.

⁵⁰ *Id.*, p. 49.

⁵¹ *Id.*, p. 50.

⁵² *Id.*, p. 47.

In the present case, respondent not only failed to prove that petitioner actually received the PAN and FLD/FAN, but equally neglected to show compliance with the requirements laid down under its own rules and regulations on proper service of assessment notices. Again, respondent's presentation of registry receipts alone is not sufficient to prove the fact of service of the subject assessment notices to petitioner. As such, for his failure to amply prove that he properly served the subject assessment notices to petitioner, respondent's deficiency assessments are considered null and void for Violation of petitioner's right to due process of law. Ultimately, the withdrawal and setting aside of the WDL based on the said void assessments, is likewise proper." (*Underscoring supplied*)

There was improper service where the PAN and the FAN were not sent by registered mail to the taxpayer's known address but to its registered address that was vacated.

The mandatory requirement found in Section 228 of the 1997 NIRC, as amended, is clearly stated:

**"TITLE VIII
REMEDIES**

**CHAPTER III
PROTESTING AN ASSESSMENT, REFUND, ETC.**

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:

(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

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

(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 exciseable articles has not been paid; or

(e) 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.

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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.” (*Underscoring supplied*)

The importance of providing the taxpayer with adequate written notice of its 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.⁵³

A review of the facts based on the evidence presented confirm the court *a quo*’s findings that due process was *not* observed when the PAN and FAN were issued to the taxpayer.

The facts are not disputed. The taxpayer transferred from its *old address* in Pasig City to the new one in Mandaluyong City. As a consequence, the attempts made by the BIR to personally serve the PAN proved *futile* and it had to resort to service by registered mail. However, despite knowing that the old address in Pasig City was no longer used by the taxpayer, the PAN and then the FAN, were still sent to the same address.⁵⁴

“Q: [Atty. Lee Realino F. Reyes, counsel for taxpayer]
Mr. Witness, in line with your answers to Question No. 13 and 14 of your Sworn Statement, you mentioned that you personally tried to serve the Preliminary Assessment Notice to the petitioner, is that correct?

A: [Zaldy Dy, Revenue Officer III]
Yes Sir. ✓

⁵³ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

⁵⁴ *Judicial Affidavit of Zaldy Dioscoro I. Dy, Revenue Officer III*, Exhibit “R-4”, Docket, pp. 369-370; Exhibits “R-3”, “R-3-A”, “R-3-B”, “R-3-C” and “R-3-D”, BIR Records, pp. 448-452; *Transcript of Stenographic Notes*, January 20, 2020 Hearing, pp. 7-9 and 11-13.

Q: When did you attempt to personally serve the Preliminary Assessment Notice?

A: The very first time was when we received the Memorandum of Assignment this October 10 but it turned out that the registered address is no longer occupied.

Q: So, that's the first.

A: Yes, but I tried to locate the taxpayer but our efforts proved futile.

Q: Did someone accompany you when you tried to serve the Preliminary Assessment Notice?

A: My Revenue Officer Mr. Wilfredo Pantino.

Q: So just for the record, where did you try to serve the Preliminary Assessment Notice?

A: At its registered address at Titan [Taipan] place.

Q: So[,] when you went there, you saw that the certain registered unit was no longer occupied by the tax payer, is that correct?

A: Yes Sir.

Q: So after the failure to serve the Preliminary Assessment Notice, you then resorted to serve the Preliminary Assessment Notice thru registered mail?

A: Yes Sir.

Q: What address did you use in sending the Preliminary Assessment Notice?

A: The registered address.

Q: So Mr. Witness, is it correct to state that despite your personal knowledge that petitioner can no longer be found at its registered address, you still use the same address in the registered mail?

A: Sir, as a matter of procedure with the Bureau.

xxx

xxx

xxx

Q: After which[,] based on your Sworn Statement[,] the Formal Letter of Demand based on your Answer to Question 16, you said that after the

FLD was issued "I sent the FLD with Assessment Notices to the petitioner's registered mail [address]." what address did you use?

A: Same registered address.

Q: The same address. Just to clarify, Mr. Witness, wherein you have personal knowledge that the tax payer is no longer using that address, is that correct?

A: Yes.

Q: Aside from the copy of the Formal letter of Demand attached as referred to as "R-3", again do you have any proof that the taxpayer actually received the Final Letter of Demand such as registry return receipt for [from] the post master?

A: None Sir.

ATTY. REYES:
No more questions, your Honors.

ATTY. VERSOZA:
No re-direct, your Honors.

JUSTICE CASTAÑEDA:
I have some questions.

Q: In the Formal Letter of Demand, the address is. Were you ever able to act to locate the address of the tax payer?

A: Yes, your Honor.

JUSTICE CASTAÑEDA:
How did you locate?

A: We personally went to his unit 507 The Taipan Place, E. Ortigas Jr. Road, San Antonio; Ortigas Center, Pasig.

JUSTICE CASTAÑEDA:
How did you discover this address?

A: When we went there, it is vacant.

JUSTICE CASTAÑEDA:
Proceed.

ATTY. VERSOZA:
No re-direct, your Honors." (*Underscoring supplied*)

Expectedly, since both the PAN dated October 6, 2016 and the FAN October 27, 2016 were sent by registered mail to the old address, they were *not*

✓

received by the taxpayer. The taxpayer had already transferred to Mandaluyong City as early as September 1, 2014.⁵⁵

The BIR cannot feign ignorance of the taxpayer's *actual* location because as early as October 9, 2014 it was able to visit the taxpayer's *new address* in Mandaluyong City when it conducted its on-site audit.⁵⁶

EXHIBIT P-4
FAITHFUL REPRODUCTION OF THE ORIGINAL PETITIONER
SEP 11 2014

Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7
Revenue District No. 043A
East Pasig

AUTHORITY TO TRAVEL/LOCATOR SLIP

Form No. _____
Employee: **CORAZON S. LEVARDO**

Name of Taxpayer: **ALTIMAX BROADCASTING CO., INC.**

Place of Destination: **GT Bldg., Pioneer Mandaluyong City**

Period Covered : **October 9, 2014**
: **Audit Books of Accounts**

CORAZON S. LEVARDO
Revenue Officer

Approved by:
JOSEPHINE S. VIRTUCIO
Revenue District Officer

6000000342

Thus, by the time it decided to deputize the new ROs to serve the PAN to the taxpayer in 2016, it already acquired knowledge of this new location. 

⁵⁵ Transcript of Stenographic Notes, October 7, 2019 Hearing, p. 9; BIR Certificate of Registration, Exhibit "P-2" and "R-1", Division Docket, p. 339.

⁵⁶ Sworn Statement of Mr. James Kenneth Venta to Questions Propounded by Atty. Lee Realino F. Reyes, Exhibit P-7, Docket, p. 244; BIR Authority to Travel / Locator Slip dated October 9, 2014 dated October 9, 2014, Exhibit "P-4", Docket, p. 342.

In addition, any lingering doubt the BIR may have entertained as to the *correct* address of the taxpayer should have been dispelled when the new ROs attempted to serve the PAN in person and discovered that the address they relied upon was no longer current. Having admitted that the old address was *vacant*, that fact should have alerted them that the old address can no longer be used to reach the taxpayer. Service by registered mail to Pasig City cannot reasonably be expected to reach the taxpayer, who, by this time, had already relocated to Mandaluyong City.

As also pointed out in the assailed Decision,⁵⁷ Section 3.1.6 of Revenue Regulation No. (RR) 12-99,⁵⁸ as amended by RR 18-2013,⁵⁹ prescribes service by mail using the registered *or known* address of the taxpayer, thus:

“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:

xxx xxx xxx

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

- (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

- (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

⁵⁷ *Rollo*, pp. 23-25.

⁵⁸ 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, September 6, 1999.

⁵⁹ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(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.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."
(Underscoring supplied)

Based on the BIR's own regulations, the taxpayer's location in Mandaluyong City qualifies as a *known address*, which is defined as "a place other than the registered address where business activities of the party are conducted." Thus, instead of adhering to the *old address* in Pasig City, the BIR should have updated its system to properly serve the assessment in Mandaluyong City and comply with Section 228's mandate.

Clearly, the PAN and FAN were *improperly* served. As a result, the taxpayer was *not* informed in writing of the law and the facts on which the assessment was based.

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.⁶⁰

Finally, aside from the PAN and FAN, the CIR presented proof of service through Registry Receipt No. RD 674 559 028 ZZ (PAN)⁶¹ and Registry Receipt No. RD 663 033 837 ZZ (FAN).⁶² However, as pointed out in the assailed decision, these documents merely prove the fact of mailing.⁶³ The question remained whether the PAN and FAN were *actually received* by the taxpayer. And since there was denial of the receipt, the burden shifted upon the CIR to prove *actual receipt*.

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,⁶⁴ the Supreme Court *invalidated* an assessment based on the finding by the CTA that the CIR failed to discharge its duty to present any evidence to show that the taxpayer indeed received the FAN sent through registered mail:

“Thus, the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes. Here, GJM filed its Annual Income Tax Return for the taxable year 1999 on April 12, 2000. The three (3)-year prescriptive period, therefore, was only until April 15, 2003. The records reveal that the BIR sent the FAN through registered mail on April 14, 2003, well-within the required period. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period. GJM, however, denies ever having received any FAN.

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

⁶⁰ *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.

⁶¹ Exhibit “R-2-A”, BIR Records, p. 435.

⁶² Exhibit “R-3-B”, BIR Records, p. 452.

⁶³ Section 3.1.6(iii) of Revenue Regulation 12-99, as amended by Revenue Regulation 8-2013.

⁶⁴ *G.R. No. 202695, February 29, 2016.*

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.

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 or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.

The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. The CIR offered in evidence Transmittal Letter No. 282 dated April 14, 2003 prepared and signed by one Ma. Nieva A. Guerrero, as Chief of the Assessment Division of BIR Revenue Region No. 8-Makati, to show that the FAN was actually served upon GJM. However, it never presented Guerrero to testify on said letter, considering that GJM vehemently denied receiving the subject FAN and the Details of Discrepancies. Also, the CIR presented the Certification signed by the Postmaster of Rosario, Cavite, Nicarter Looc, which supposedly proves the fact of mailing of the FAN and Details of Discrepancy. It also adduced evidence of mail envelopes stamped February 17, 2003 and April 14, 2003, which were meant to prove that, on said dates, the Preliminary Assessment Notice (PAN) and the FAN were delivered, respectively. Said envelopes also indicate that they were posted from the Makati Central Post Office. However, according to the Postmaster's Certification, of all the mail matters addressed to GJM which were received by the Cavite Post Office from February 12, 2003 to September 9, 2003, only two (2) came from the Makati Central Post Office. These two (2) were received by the Cavite Post Office on February 12, 2003 and May 13, 2003. But the registered mail could not have been the PAN since the latter was mailed only on February 17, 2003, and the FAN, although mailed on April 14, 2003, was not proven to be the mail received on May 13, 2003. The CIR likewise failed to show that said mail matters received indeed came from it. It could have simply presented the registry receipt or the registry return card accompanying the envelope purportedly containing the assessment notice, but it offered no explanation why it failed to do so. Hence, the CTA aptly ruled that the CIR failed to discharge its duty to present any evidence to show that GJM indeed received the FAN sent through registered mail on April 14, 2003." (*Underscoring supplied*)

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The testimony from the CIR's only witness, who stated that the PAN and the FAN were mailed to the old address, despite having personally found out that it was vacated, only made the fact of the assessment ever reaching the taxpayer an impossibility. Undoubtedly, the taxpayer did not receive the PAN and the FAN.

Since the PAN and FAN were *improperly* served, the taxpayer was *not* informed in writing of the law and the facts on which the assessment was based. This is a *violation* of the due process requirement in Section 228 of the 1997 NIRC, as amended.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.

Under Section 228 of the 1997 NIRC, as amended, 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.

Tax assessments issued in violation of this due process requirement in Section 228 are *null and void*. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its 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.⁶⁵

Section 228 and the revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the BIR to consider the 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*.⁶⁶

Based on the foregoing discussion, petitioner CIR evidently failed to raise any issue that has convinced the Court *En Banc* to modify or reverse the assailed decision and resolution of the court *a quo*.

WHEREFORE, premises considered, the Petition for Review filed by petitioner is **DENIED** for lack of merit. The assailed Decision dated October 6, 2021 and the Resolution dated April 21, 2022 of the court *a quo* are hereby **AFFIRMED**. 

⁶⁵ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

⁶⁶ *Id.*

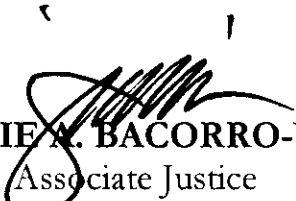
SO ORDERED.

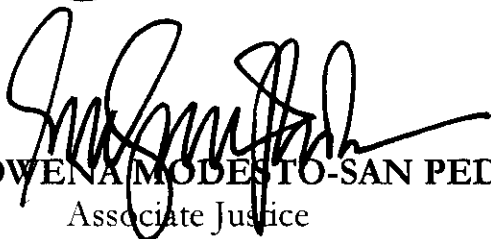

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

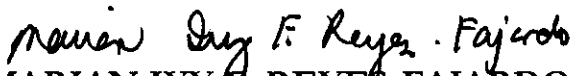
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

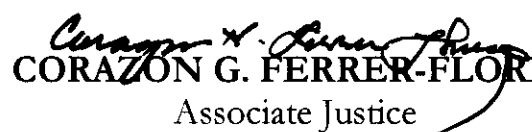

CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

(On Leave)
HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice