REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VITALO PACKAGING INTERNATIONAL, INC., *Petitioner,*	**CTA CASE No. 9231** For: Assessment
-versus-	Members: CASTAÑEDA, JR., *Chairperson* and MINDARO-GRULLA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 05 2019 11:05 a.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision on October 5, 2018, is a Petition for Review[1] under Rule 8 of the Revised Rules of the Court of Tax Appeals filed on January 7, 2016 by petitioner Vitalo Packaging International, Inc. against respondent Commissioner of Internal Revenue ("CIR").

Petitioner seeks that the Final Decision of respondent dated December 3, 2015, denying petitioner's request for reconsideration against the assessment demanding payment of the amount of ₱63,322,955.83, representing alleged deficiency income tax, final withholding tax ("FWT"), fringe benefit tax ("FBT"), and expanded withholding tax ("EWT"), including penalties and interests, for the calendar year 2006, be reversed and set aside, and further praying that the Final Assessment Notice ("FAN"), Preliminary Collection Letter ("PCL"), Final Notice Before Seizure ("FNBS") and Warrant of Distraint and/or Levy ("WDL") and all the proceedings conducted by respondent or her representative/s be declared null and void.

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[1] Docket (Vol. I) pp. 10-60.

Petitioner Vitalo Packaging International, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with registered address at Lot 1-B No. 118 Phase 5 East Main Ave., Laguna Technopark, Binan, Laguna 4024.[2] Petitioner is registered with the Bureau of Internal Revenue with Taxpayer Identification Number 049-149-160-000[3] and the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise under PEZA Certificate of Registration No. 96-088.[4]

Respondent is sued in his official capacity as the Commissioner of Internal Revenue ("CIR"), having been duly appointed to perform the duties of his office, including inter alia, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the National Internal Revenue Code of 1997, as amended, (the "Tax Code") and Section 7 of Republic Act ("R.A.") No. 1125, as amended by R.A. No. 9282. Respondent holds office and may be served with summons, notices and other processes of the Court at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, Metro Manila.

Pursuant to Letters of Authority (LOA) No. 00018873, Revenue Officer Enrico Cruz and Group Supervisor Edwin Montealegre of Revenue Region ("RR") No. 9 – San Pablo City examined and investigated the Books of Accounts and other Accounting Records of petitioner for all internal revenue taxes covering calendar year 2006.[5]

On April 18, 2008, petitioner filed with the Bureau of Internal Revenue – Revenue District Office (BIR-RDO) No. 057 an Application for Registration Information Update (BIR Form 1905), informing the latter of petitioner's change of registered office address from Bldg. 1, Panorama Compound, LIIP, 4024, Binan, Laguna to Lot 1-B, No. 118 Phase 5 East Main Avenue, Laguna Technopark, Phase V, Binan Laguna.[6] On even date, Petitioner was issued a Certificate of Registration reflecting its new registered address.[7]

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[2] Docket (Vol. III), Exhibit "P-3-a", p. 913.
[3] Docket (Vol. III), Exhibit "P-3", p. 913.
[4] Docket (Vol. III), Exhibit "P-4", p. 915.
[5] BIR Records, "Exhibit "P-6", p. 575.
[6] Docket (Vol. III), Exhibit "P-2", p. 912
[7] Docket (Vol. III), Exhibit "P-3", p. 913.

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On April 23, 2009, a Revalidation Notice was issued to petitioner informing the latter that LOA No. 18873 was revalidated on the said date to replace the previously assigned Revenue Officer and authorizing RO Flora Coeli S. Penaloza to be supervised by GS Thelma M. Omalin to continue the examination of petitioner's books of accounts and all other accounting records.[8]

On November 6, 2009, a Notice of Informal Conference ("NIC") was issued to petitioner requesting it to appear for an informal conference within ten days from receipt.[9] The NIC indicated Bldg. I Panorama Compound, LIIP, Mamplasan, Binan, Laguna as petitioner's address.

On February 25, 2010, pursuant to Pre-Audit and Review of 2006 Annual Income Tax Returns of PEZA Registered under LOA No. 00004547 dated March 29, 2010, another NIC was issued informing petitioner that, after audit, deficiency income tax in the amount of ₱330,323.95 is found due for taxable year 2006.[10] The NIC again indicated Bldg. I Panorama Compound, LIIP, Mamplasan, Binan, Laguna as petitioner's address.

On March 22, 2010, the Preliminary Assessment Notice relating to the Pre-Audit and Review was issued and sent through registered mail to petitioner's old address.[11]

On March 29, 2010, Regional Director Rodita B. Galanto issued LOA No. 4547 authorizing RO Ma. Evangeline B. Capuno and GS Dolores O. Zaporteza of RR No. 9 to audit the 2006 tax returns, books of accounts, and other accounting records of petitioner.[12] LOA No. 4547 was addressed to petitioner's old address.

Thereafter, Regional Director Rodita B. Galanto issued a Formal Letter of Demand ("FLD")[13] and Assessment Notice[14] with Assessment Number 57-2006 dated April 15, 2010 pursuant to the investigation under LOA No. 00004547, demanding payment of the total amount of ₱336,469.95 representing deficiency income tax for

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[8] BIR Records, Exhibit "R-3", p. 579.
[9] BIR Records, Exhibit "R-4", p. 676.
[10] BIR Records, p. 186.
[11] BIR Records, Exhibit "P-7", pp. 188-189.
[12] BIR Records, Exhibit "P-5", p. 191.
[13] BIR Records, Exhibit "P-8", p. 195.
[14] BIR Records, Exhibit "P-8-B", p. 196.

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calendar year 2006. The FLD indicated Panorama Compound LIIP-PEZA, Binan, Laguna as petitioner's address.[15]

On May 24, 2010, petitioner filed its protest to the FAN.[16]

On September 9, 2010, respondent issue to petitioner an Amended PAN which indicated Panorama Compound LIIP-PEZA, Binan, Laguna as petitioner's address.[17] On December 3, 2010, respondent issued an Amended FLD with Assessment Notice No. 57/2006 issued on even date.[18] The Amended FLD/FAN again indicated Panorama Compound LIIP-PEZA, Binan, Laguna as petitioner's address.

On May 25, 2011, respondent issued a *Preliminary Collection Letter* (PCL) signed by Revenue District Office Julio Alcasabas which was addressed to its LIIP-PEZA, Binan, Laguna office.[19]

On June 9, 2011, petitioner filed a letter with Revenue District Officer Julio Alcasabas of RDO 57, contesting the PCL and requesting an extension of 30 days within which to file the necessary memorandum.[20]

On June 13, 2011, Revenue District Officer Alcasabas issued a letter to petitioner stating that the docket of petitioner's case was referred to the Assessment Section of RDO 57 for re-investigation.[21] The letter indicated Panorama Compound LIIP-PEZA, Binan, Laguna as petitioner's address.[22]

On June 30, 2011, petitioner filed a reply with BIR RDO 57 requesting an extension of 30 days to file an explanation as required by said office.[23]

On July 25, 2011, Revenue District Officer Alcasabas issued a letter to petitioner stating that petitioner's letter-request for re-

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[15] BIR Records, Exhibit "P-8-A", p. 195.
[16] BIR Records, Exhibit "P-9", pp. 123-141.
[17] BIR Records, Exhibit "R-8", pp. 692-697.
[18] BIR Records, Exhibit "R-9", pp. 703-715.
[19] BIR Records, Exhibit "P-10", p. 339.
[20] Docket (Vol. III), Exhibit "P-11", pp. 930-932.
[21] Docket (Vol. III), Exhibit "P-12", p. 933.
[22] Docket (Vol. III), Exhibit "P-12-a", p. 933.
[23] Docket (Vol. III), Exhibit "P-13", p. 934.

investigation was forwarded to the Regional Office, San Pablo City for approval. [24] The letter also stated that his office is advised to proceed with the collection through summary proceedings as set forth under revenue regulations. The letter indicated Panorama Compound LIIP-PEZA, Binan, Laguna as petitioner's address.[25]

On August 12, 2011, Revenue District Officer Alcasabas issued a *Final Notice Before Seizure*, again addressed to petitioner's Panorama Compound LIIP-PEZA, Binan, Laguna address.[26]

On September 14, 2011, petitioner filed a letter with Revenue District Officer Alcasabas refuting the findings against the alleged delinquency taxes.[27]

On October 14, 2011, Revenue District Office Alcasabas issued a letter denying petitioner's request for reinvestigation and stating that petitioner is under advise [*sic*] to proceed with the enforcement of collection of the assessed deficiency taxes through summary remedies. The letter indicated Panorama Compound LIIP-PEZA, Binan, Laguna as petitioner's address.[28]

On November 24, 2011, Revenue District Office Alcasabas issued a *Warrant of Distraint and/or Levy (WDL)* addressed to petitioner's Panorama Compound LIIP-PEZA, Binan, Laguna address.[29]

On December 23, 2011, petitioner filed a letter with the Regional Director Jose N. Tan, requesting the cancellation of the WDL, FNBS and FAN for want of legal and factual basis.[30]

On September 3, 3012, Revenue District Officer Alcasabas issued a letter to petitioner stating that the Legal Division, Revenue Region No. 9 denied the request for cancellation of the WDL, FNBS and FAN for lack of merit.[31]

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[24] Docket (Vol. III), Exhibit "P-14", p. 936.
[25] Docket (Vol. III), Exhibit "P-14-a", p. 936.
[26] Docket (Vol. III), Exhibit "P-15", p. 937.
[27] Docket (Vol. III), Exhibit "P-16", pp. 939-955.
[28] Docket (Vol. III), Exhibit "P-17", p. 956.
[29] Docket (Vol. III), Exhibit "P-18", p. 959.
[30] Docket (Vol. III), Exhibit "P-20", p. 978.
[31] Docket (Vol. III), Exhibit "P-19", pp. 960-977.

On October 19, 2012, petitioner filed a letter with Revenue Region No. 9, requesting the administrative decision on the protest letter filed on December 23, 2011.

On November 5, 2012, Regional Director Jose N. Tan issued a memorandum informing petitioner of the legal basis of the denial of its request.[32]

On November 23, 2012, petitioner filed an administrative appeal with respondent.[33]

On December 9, 2015, petitioner received the Decision dated December 3, 2015 of respondent denying petitioner's appeal.[34]

Aggrieved by respondent's Decision, petitioner filed its Petition for Review[35] with the Court on January 7, 2016.

On January 15, 2016, this Court issued summons against the respondent and was ordered to submit an Answer to the said petition.[36] On February 3, 2016, Respondent then filed a Motion for Extension of Time to File Answer[37], which the Court granted in an Order dated February 5, 2016.[38] Respondent filed his *Answer*[39] on April 11, 2016, interposing the following special and affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and repleads the preceding paragraphs of the Answer as part of her Special and Affirmative Defenses.

The assessment has become final, executory and demandable pursuant to the clear

[32] Docket (Vol. III), Exhibit "P-22", pp. 979-983.
[33] Docket (Vol. III), Exhibit "P-23", pp. 984-1004.
[34] Docket (Vol. III), Exhibit "P-28", pp. 1036-1048.
[35] Docket (Vol. I), pp. 10-192.
[36] Docket (Vol. I), p. 193.
[37] Docket (Vol. I), pp. 195-199.
[38] Docket (Vol. I), p. 200.
[39] Docket (Vol. I), pp. 213-227.

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provisions of Section 228 of the National Internal Revenue Code.

5. Before going into detail as to why petitioner's contentions are not only misguided but blatantly erroneous, respondent emphasizes that the assessment against petitioner for deficiency Income Tax, Final Withholding Tax, Fringe Benefit Tax and Expanded Withholding Tax for taxable year 2006 has already become final, executor and demandable.

6. Section 228 of the National Internal Revenue Code (Tax Code) explicitly states:

> **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:
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations.
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> **otherwise, the decision shall become final, executory and demandable.**

(Emphasis supplied).

7. In the instant case, the Amended Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) in reply to petitioner's protest dated 24 May 2010 was issued and received by petitioner on 14 December 2010.

8. Petitioner, thus, supposedly had until 13 January 2011 within which to file its protest thereto.

9. Petitioner, however, slept on its rights and failed to do so.

10. Thus, it cannot be denied that the assessment for petitioner's deficiency Income Tax, Final Withholding Tax, Fringe Benefit Tax and Expanded Withholding Tax for taxable year 2006 has already become final, executory and demandable pursuant to the clear provisions of Section 228 of the Tax Code.

Petitioner was not and was never deprived of its constitutionally protected right to due process.

11. Petitioner contended that respondent violated its right to procedural due process for the following reasons;

    a. First it alleged that it did not receive the Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN) and FAN as said documents were sent to its old registered address;
    b. Second, that it received two (2) Letters of Authority for the same taxable year; and
    c. That the Preliminary Collection Letter indiscriminately increased the assessment contained in the Formal Letter of Demand and Assessment Notices.

12. Respondent finds petitioner's arguments untenable.

13. First, respondent has issued and served the following documents in relation to the assessment of all internal revenue taxes of petitioner for taxable year 2006.

    a. Letter of Authority No. 00018873 dated 18 October 2007;
    b. Checklist of Requirements;
    c. Revalidation Notice dated 23 April 2009;
    d. Notice of Informal Conference dated 6 November 2009;
    e. Letter of Authority No. 00004547 dated 25 February 2010 issued pursuant to Pre Audit Review of 2006 Annual Income Tax Returns of PEZA Registered Enterprises;
    f. Preliminary Assessment Notice relating to Letter of Authority No. 00004547;
    h. Amended Preliminary Assessment Notice dated 7 September 2010 consolidating the findings under Letter of Authority Nos. 00018873 and 00004547;
    i. Amended Formal Letter of Demand and Assessment Notices dated 3 December 2010;
    j. Preliminary Collection Letter dated 25 May 2011;
    k. Final Notice Before Seizure dated 12 August 2012;

14. All notices by respondent were sent to one address, albeit to the old registered address of petitioner, and were received by the same people who received the other notices.

15. It is noteworthy, petitioner was able to protest and file their replies to the following notices despite the fact that the same were sent to the old registered business address of petitioner – to which it claims having no connection thereof;

    a. Formal Letter of Demand relating to Letter of Authority No. 4547 – an audit and investigation resulting to an assessment for a significantly lower amount.

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b. Preliminary Collection Letter dated 25 May 2011; and
c. Final Notice Before Seizure dated 12 August 2012;

16. Thus, it is not only untenable but really unbelievable that petitioner now asserts that it only received, by its own admissions, the three notices which were, to stress, issued and served to petitioner under the same circumstances as the other notices.

17. Moreover, the essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.

18. In the case at hand, respondent has thoroughly considered petitioner's arguments and contentions; which ultimately led to the issuance of the Formal Letter of Demand and Assessment Notices.

19. Thus, having substantially complied with the procedural requirements in the conduct of the audit and investigation, it is clear that the essence of due process was satisfied.

20. Second, the issuance of the assessment was well within the implementing rules and regulations promulgated by the Bureau of Internal Revenue.

21. Letter of Authority No. Letter of Authority No. [*sic*] 00018873 dated 18 October 2007 was issued pursuant to Section 13 of the Tax Code as implemented by Revenue Memorandum Orders Nos. 36-1999 and 24-2000.

22. Letter of Authority No. 00004547 dated 25 February 2010, on the other hand, was issued pursuant to Pre Audit Review of 2006 Annual Income Tax Returns of PEZA Registered Enterprises.

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23. Clearly, both were validly issued.

24. Moreover, to be clear, the result of investigations for both Letters of Authority were consolidated in one (1) amended PAN, FLD and FAN.

25. Thus, petitioner's contention is obviously bereft of merit.

26. Finally, petitioner argued that there was a significant increase from the FLD and FAN as compared to the Preliminary Collection Letter.

27. This is plainly wrong.

28. The Preliminary Collection Letter is based on the Amended FLD and FAN which was a result of petitioner's failure to respond to the Amended PAN.

29. Thus, clearly the issuance of the FAN and FLD was issued validly.

30. Therefore, petitioner was not and was never deprived of its constitutionally protected right to due process.

The assessment was validly issued within the period of assessment.

31. Petitioner claimed that respondent's right to assess has prescribed anchoring its claim on Section 203 of the Tax Code, to wit:

> **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 case where a return is filed beyond the period prescribed by law, the three-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.

32. Respondent disagrees.

33. The case at hand falls squarely as an exception to Section 203 of the Tax Code – that is when both the taxpayer and the Commissioner have agreed in writing to extend the time for assessment. Section 222 of the Tax Code states:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

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(b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.**

The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

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(Emphasis supplied).

34. In the instant case, petitioner executed a Waiver of the Defense of Prescription for it to be able to submit and/or present the required books of accounts and other accounting records to facilitate the examination in connection with audit and/or investigation of all its internal revenue taxes for taxable year 2006.

35. Such action on part of petitioner validly extended the period to assess petitioner.

36. In fact, it was executed by Mr. Daniel P. Julaton, petitioner's authorized representative in the instant case.

37. Thus, it is quite absurd and unfair that when the PAN, FLD and FAN proved to be adverse to petitioner, it would not assert that the period to assess had already prescribed.

38. Therefore, the waiver validly extended respondent's period to assess petitioner. Consequently, the FLD and FAN received by petitioner was issued well within the prescriptive period.

Petitioner is liable for deficiency Income Tax.

A. Special Rate

39. Petitioner argued that respondent mistakenly disallowed the following deductions:

a. Salaries and Wages;
b. Repairs and Maintenance – Labor;
c. Communication, Light and Water;
d. Foreign Exchange Currency Losses; and
e. Depreciation.

40. Petitioner's reasons deserve no consideration.

a. Salaries and Wages

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Verification disclosed that the petitioner failed to substantiate its claim for salaries and expenses as part of its deductions. Thus, pursuant to Section 34 of the Tax Code, said deduction must be disallowed.

b. Repairs and Maintenance, Communication Light Water, Losses and Depreciation.

For production overheads to be deductible, petitioner should have proved that the same can be justifiably allocated as production overheads incurred in the manufacture of foods pursuant to its PEZA registered activity. Petitioner has failed to do so.

First, petitioner has not presented an iota of evidence as to the nature of these expenses and how it relates to its PEZA registered activity.

In fact, it even opted to deduct Foreign Exchange Losses that it incurred – an expenses [*sic*] which has no relation whatsoever in its production process.

41. Therefore, respondent assessment for deficiency Income Tax (Special Rate) in the aggregate amount of P359,956.45 must stand.

B. Regular Rate

42. Petitioner argued that respondent mistakenly disallowed its claim for deduction as regards its salaries and wages.

43. Section 34 of the Tax Code states:

SEC. 34. Deductions from Gross Income. – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions

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shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B), and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;

(A) Expenses. –

(1) Ordinary and Necessary Trade, Business or Professional Expenses. –

(b) Substantiation Requirements. – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

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(Emphasis supplied).

44. Petitioner failed to do so in this regard.

45. Therefore, respondent assessment for deficiency Income Tax (Regular Rate) in the aggregate amount of P3,105,704.00 must stand.

Petitioner is liable for deficiency Final Withholding Tax (Income Payments to Non-Resident Foreign Corporation).

46. Petitioner maintained that it is not liable for FWT since the income payments were made to a non-resident foreign corporation.

47. These contentions of petitioner are mere allegations without proof.

48. First, audit and investigation revealed that Consultancy Agreement Services or Management Fee amounting to P7,960,702.00 should have been subjected to FWT pursuant to Section 28 of the Tax Code and relevant issuances of the Bureau of Internal Revenue.

49. Second, petitioner failed to substantiate its claim that the income payments were indeed made to a non-resident foreign corporation.

50. Therefore, for petitioner's failures, the assessment should be upheld.

51. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

52. Thus, for the reason alone that petitioner has failed to offer competent proof during the administrative level of assessment – which effectively deprived respondent to consider the same, the assessment for deficiency FWT must be held as correct.

Petitioner is liable for deficiency Final Withholding Tax (Royalties and Interest Expense).

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53. Petitioner further argued that it is not liable for deficiency FTW relating to its Royalty and Interest payments.

54. These contentions of petitioner are bereft of merit.

55. Petitioner failed to substantiate its claims. It has not presented any evidence to prove that respondent has indeed mistakenly assessed it for deficiency FWT and that it has paid the correct amount of FWT.

56. It bears to stress the timeless legal maxim in taxation law that tax exemptions are construed strictly against the taxpayer and liberally in favor of the government. Tax exemption cannot be made by inference or implication but rather must be proven by clear and convincing evidence. In case of doubt, the same shall be resolved against the grant of exemption.

57. Thus, petitioner is indeed liable for deficiency FWT in the amounts of P48,991,816.05 and P971,854.71, relating to Royalty and Interest, respectively.

Petitioner is liable for deficiency Fringe Benefit Tax (FBT).

58. Verification disclosed that the monetary value of the Fringe Benefits that petitioner has granted to its employees has not been subjected to FBT.

59. Section 33 (A) of the Tax Code states:

SEC. 33. Special Treatment of Fringe Benefit. –

(A) **Imposition of Tax. – a final** tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and

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thirty-two percent (32%) effective January 1, 2000 and thereafter, **is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer).** The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code.

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(B) Fringe Benefit defined. – For purposes of this Section, the term "fringe benefit" means any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees as defined herein) such as, but not limited to, the following:

(1) Housing;
(2) Expense account;
(3) Vehicle of any kind;
(4) Household personnel, such as maid, driver and others;
(5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
(6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;

(7) Expenses for foreign travel;
(8) Holiday and vacation expenses;
(9) Educational assistance to the employee or his dependents; and
(10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

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(Emphasis supplied).

60. Clearly, the benefits granted by petitioner to its employees being taxed for deficiency FBT fall squarely under the definition of fringe benefit provided by the Tax Code.

61. Thus, the assessment for deficiency FBT in the aggregate amount of P9,239,888.24 should be upheld.

61. Thus, the assessment for deficiency FBT in the aggregate amount of P9,239,888.24 should be upheld. [*sic*]

Petitioner is liable for deficiency Expanded Withholding Tax (EWT).

62. Petitioner maintained that it is not liable for deficiency EWT. It averred that these income payments were already subjected to EWT.

63. These [*sic*] contention is without proof.

64. Audit and investigation revealed that some expenses hould [*sic*] have been subjected to EWT pursuant to Section 57 of the Tax Code and relevant issuances of the Bureau of Internal Revenue.

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65. At the risk of being repetitive, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

66. Thus, petitioner having failed to refute the assessment, it should be held liable for deficiency EWT in the aggregate amount of P1,690,326.38." (*Citations omitted*)

On April 14, 2016, this Court set the pre-trial conference of the instant case and ordered both parties to submit their respective pre-trial brief.[40] Petitioner filed its pre-trial brief[41] on May 23, 2016, while respondent submitted its pre-trial brief[42] on even date.

On May 26, 2016, this Court ordered[43] the parties to file a joint stipulation of facts and issues which they submitted on June 8, 2016.[44] Hence, the Pre-trial Order was issued on June 22, 2016.[45]

To prove its case, petitioner presented as witnesses Daniel Julaton[46], petitioner's Operations Manager/Director; Helen Herrera[47], petitioner's Finance Supervisor; Gemma Suazo[48], petitioner's Accounting Finance Assistant; and Atty. Adan Delamide[49], the court-commissioned Independent Certified Public Accountant.

On October 27, 2016, petitioner filed its Formal Offer of Evidence.[50] In a Resolution dated December 13, 2016, the Court admitted all of petitioner's evidence, except for Exhibits "P-21", "P-

[40] Docket (Vol. I), Notice of Pre-Trial Conference, pp. 229-230.
[41] Docket (Vol. I), pp. 231-246.
[42] Docket (Vol. I), pp. 247-252.
[43] Docket (Vol. I), Minutes of the Hearing dated May 26, 2016, p. 253.
[44] Docket (Vol. I), pp. 272-282.
[45] Docket (Vol. III), pp. 774-782.
[46] Docket (Vol. III), Order dated July 4, 2016, p. 825.
[47] Docket (Vol. III), Order dated July 4, 2016, p. 825.
[48] Docket (Vol. III), Order dated September 14, 2016, p. 861.
[49] Docket (Vol. III), Order dated September 14, 2016, p. 861.
[50] Docket (Vol. II), pp. 879-909.

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21-a", and "P-82, for failure to submit the duly marked exhibits; "P-27", "P-27-a", and "P-27-b", for failure to properly identify; "P-3128", for failure of the said exhibit to correspond with the document actually marked; and "P-2132 to P-2133", for not being found in the records.[51]

On January 18, 2017, petitioner filed a Motion for Reconsideration (Re: Resolution dated 13 December 2016), seeking reconsideration of the Court's Resolution dated December 13, 2016, which denied the admission of Exhibits, "P-21", "P-21-a", "P-27", "P-27-a", "P-27-b", and "P-3128". In the Resolution dated August 1, 2017, the Court partially granted petitioner's Motion for Reconsideration (Re: Resolution dated 13 December 2016) and admitted Exhibits "P-27", "P-27-a", "P-27-b", and "P-3128"[52]. However, Exhibits "P-21" and "P-21-a were still denied admission.

The documentary evidence formally offered by the petitioner and admitted by the Court are as follows:

Exhibit:	Description:
P-1	Secretary's Certificate duly notarized on 21 December 2015
P-2	Application for registration information update (BIR Form No. 1905) with BIR stamped received dated 18 April 2008
P-2-a	Original BIR stamped received dated 19 April 2008
P-3-a	Registered address "Lot 1-B No. 118 Phase 5 East Main Avenue Laguna Technopark Binan Laguna 4024"
P-3-b	Original stamped "received" dated 18 April 2008
P-4-c	Certification PEZA-ERD Form No. 03-01
P-5	Letter of Authority (LOA) No. OLA 1999 00004547 dated 29 March 2010
P-6	LOA No. 2007 00018873 dated 18 October 2007
P-7	Preliminary Assessment Notice dated 22 March 2010
P-7-a	Address of Vitalo Packaging International Inc.
P-8	Formal Letter of Demand dated 15 April 2010
P-8-a	Address of Vitalo Packaging International Inc.
P-8-b	Audit Result/Assessment Notice No. 7-2006 dated 15 April 2010
P-9	Letter to BIR Revenue Region No. 9 dated 24

[51] Docket (Vol. III), pp. 1191-1193.
[52] Per Resolution dated August 29, 2017 (Docket Vol. III), pp. 1218 to 1220, amending the conflicting statement in the dispositive portion of the Resolution dated August 1, 2017, which both admitted and denied Exhibit "P-3128".

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	May 2010
P-9-a	Signature of Gemma Suazo
P-9-b	Certification of the Company HR Supervisor attesting to the share allocated to production employees' statutory benefits such as Pag-Ibig, SSSS, and Philhealth
P-9-d	Flowchart of the controlled and non-controlled facilities and equipment layout
P-9-e	DI water schematic diagram
P-9-f	Breakdown summary of the water cost charges
P-9-h	Lapsing Schedule of the Production Equipment showing depreciation
P-10	Preliminary Collection Letter dated 25 May 2011
P-10-a	Address of Vitalo Packaging International Inc.
P-11	Letter to BIR RDO No. 57 dated 09 June 2011
P-11-a	Signatures of Daniel Julaton and Gemma Suazo
P-12	BIR Letter dated 13 June 2011
P-12-a	Address of Vitalo Packaging International Inc.
P-13	Letter to BIR RDO No. 57 dated 30 June 2011
P-13-a	Signature of Gemma Suazo
P-14	BIR Letter dated 25 July 2011
P-14-a	Address of Vitalo Packaging International Inc.
P-15	Final Notice Before Seizure dated 12 August 2011
P-15-a	Address of Vitalo Packaging International Inc.
P-16	Letter to BIR dated 14 September 2011
P-16-a	Signature of Gemma Suazo
P-17	BIR Letter dated 14 October 2011
P-18	Warrant of Distraint and/or Levy (WDL) No. 057-11-2011-0013
P-19	Letter to BIR dated 23 December 2011
P-19-a	Signature of Gemma Suazo
P-20	BIR Letter dated 03 September 2012
P-21	Letter to BIR dated 19 October 2012
P-22	BIR Letter dated 05 November 2012
P-23	Letter to BIR dated 23 November 2012
P-23-a	Signatures of Daniel Julaton and Gemma Suazo
P-24	BIR Letter dated 26 November 2012
P-24-a	Address of Vitalo Packaging International Inc.
P-25	Letter to BIR dated 19 December 2012
P-25-a	Signature of Gemma Suazo
P-26	Decision of the BIR- Revenue Region No. 9 dated 28 September 2013
P-26-a	Phrase "*This is the final decision of this Region on the subject matter*"
P-26-b	Signature of Jose Tan
P-27	Administrative Appeal dated 20 November 2013 on the Decision of the BIR-Revenue Region No. 9 dated 28 September 2013
P-27-a	Signatures of Benigno G. Par, Jr., and Pia Ursula Albano

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P-27-b	Signatures of Daniel Julaton and Gemma Suazo
P-29	Quarterly Income Tax Return (BIR Form No. 1702Q) for the First Quarter of FY2006 with reference no. 130600001078347 filed on May 24, 2006
P-30	BIR Form No. 1702Q for the Second Quarter of FY2006 with reference no. 130600001209328
P-31	BIR Form No. 1702Q for the Third Quarter of FY2006 with reference no. 13060001336363 filed on November 23, 2006
P-32	Annual Income Tax Return (BIR Form No. 1702) for FY2006 with reference no. 120700001572845 filed on April 16, 2007
P-33	Monthly Withholding Tax on Compensation (BIR Form 1601C) for the month of January 2006 with reference no. 01060000912828 filed February 13, 2006
P-33-a	Efps payment details with reference no. 010600000912828 with payment of P577,189.28
P-34	BIR Form 1601C for the month of February 2006 with reference no. 01060000951454 filed on March 10, 2006
P-34-a	Efps payment details with reference no. 010600000951454 with payment of P384,431.70
P-35	BIR Form 1601C for the month of March 2006 with reference no. 010600001010567 filed April 11, 2006
P-35-a	Efps payment details with reference no. 010600001010567 with payment of P339,827.23
P-36	BIR Form 1601C for the month of March 2006 with reference no. 010600001055567 fled on May 10, 2016
P-36-a	Efps payment detail wit reference no. 010600001055567 with payment of P585,643.20
P-37	BIR Form 1601C for the month of May 2006 with reference no. 010600001109682 filed on June 13, 2006
P-37-a	Efps payment details with reference no. 010600001109682 with payment of P516,244.32
P-38	BIR Form 1601C for the month of June 2006 with reference no. 010600001152072 filed on July 12, 2006
P-38-a	Efps payment details with reference no. 010600001152072 with payment of P230,500.52
P-39	BIR Form 1601C for the month of July 2006 with reference no. 010600001192947 filed on August 11, 2006
P-39-a	Efps payment details with reference no. 01060000192947 filed on August 11, 2006
P-40	BIR Form 1601C for the month of August 2006 with reference no. 010600001238856 filed on

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	September 12, 2006
P-40-a	Efps payment details with reference no. 010600001238856 with payment of P348,692.82
P-41	BIR Form 1601C for the month of September 2006 with reference no. 010600001273550 filed on October 10, 2006
P-41-a	Efps payment details with reference no. 010600001273550 with payment of P383,476.94
P-42	BIR Form 1601C for the month of October 2006 with reference no. 010600001321625 filed on November 13, 2006
P-42-a	Efps payment details with reference no. 010600001321625 with payment of P475,4444.50
P-43	BIR Form 1601C for the month of November 2006 with reference no. 010600001369540 filed on December 13, 2006
P-43-a	Efps payment details with reference no. 01060000139540 with payment of P416,678.06
P-44	BIR Form 1601C for the month of December 2006 with reference no. 010700001409102 filed on January 12, 2007
P-44-a	Email from TAXPAYER@stmp-gw.bir.gov.ph re efps payment summary with filing reference no. 10700001409102
P-45	Monthly Final Withholding Tax (BIR Form 1601F) for the month of January 2006 with reference no. 200600000912991 filed on February 13, 2006
P-46	BIR Form 1601F for the month of February 2006 with reference no. 200600000951308 filed on March 10, 2006
P-47	BIR Form 1601F for the month of March 2006 with reference no. 2006000001010585 filed on April 11, 2006
P-48	BIR Form 1601F for the month of April 2006 with reference no. 20060000001055635 filed on May 10, 2006
P-49	BIR Form 1601F for the month of May 2006 with reference no. 200600001109597 filed on June 13, 2006
P-50	BIR Form 1601F for the month of June 2006 with reference no. 200600001152088 filed on July 12, 2006
P-51	BIR Form 1601F for the month of July 2006 with reference no. 200600001193002 filed on August 11, 2006
P-52	BIR Form 1601F for the month of August 2006 with reference no. 200600001240994 filed on September 13, 2006
P-53	BIR Form 1601F for the month of September

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	2006 with reference no. 200600001273959 filed on October 10, 2006
P-54	BIR Form 1601F for the month of October 2006 with reference no. 200600001321708 filed on November 13, 2006
P-55	BIR Form 1601F for the month of November 2006 with reference no. 200600001369580 filed on December 13, 2006
P-56	BIR Form 1601F for the month of December 2006 with reference no. 200700001409268 filed on January 12, 2007
P-57	Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form 1604CF) for Calendar Year 2006 with reference no. 210700001449681 filed on January 31, 2007
P-57-b	Alphalist of Employees with no previous employer within the year
P-57-c	Alphalist of Employees before December 31, 2016
P-57-d	Alphalist of Employees as of December 31, 2006
P-58	Quarterly Remittance Return on Final Taxes Withheld (BIR Form 1603) for the 1st Quarter of FY2006 with reference no. 040600001019663 filed on April 17, 2006
P-58-a	Efps payment details with reference no. 040600001019663 with payment of P133,390.06
P-59	BIR Form 1603 for the 2nd Quarter of FY2006 with reference no. 040600001129716 with payment of P83,098.60
P-59-a	Efps payment details with reference no. 040600001267429 filed on October 9, 2006
P-60	BIR Form 1603 for the 3rd Quarter of FY2006 with reference no. 040600001267429 filed on October 9, 2006
P-60-a	Efps payment details with reference no. 040600001267429 with payment of P107,999.41
P-61	BIR Form 1603 for the 4th Quarter of FY2006 with reference no. 040700001388768 filed on January 5, 2007
P-61-a	Efps payment details with reference no. 040600001388768 with payment of P94,405.06
P-62	Monthly Expanded Withholding Tax (BIR Form 1601E) for the month of January 2009 with reference no. 020600000915575 filed on February 2006
P-63	BIR Form 1601E for the month of February 2006 with reference no. 020600000954995 filed on March 13, 2006
P-64	BIR Form 1601E for the month of March 2006 with reference no. 020600001010649 filed on

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	April 11, 2006
P-65	BIR Form 1601E for the month of April 2006 with reference no. 020600001055734 filed on May 10, 2006
P-66	BIR Form 1601E for the month of May 2006 with reference no. 020600001109265 filed on June 13, 2006
P-67	BIR Form 1601E for the month of June 2006 with reference no. 020600001152055 filed on July 12, 2006
P-68	BIR Form 1601E for the month of July 2006 with reference no. 020600001195376 filed on August 14, 2006
P-69	BIR Form 1601E for the month of August 2006 with reference no. 020600001241083 filed on September 13, 2006
P-70	BIR Form 1601E for the month of September 2006 with reference no. 020600001278180 filed on October 11, 2006
P-71	BIR Form 1601E for the month of October 2006 with referend no. 020600001321676 filed on November 13, 2006
P-72	BIR Form 1601E for the month of November 2006 with reference no. 020600001369617 filed on December 13, 2006
P-73	BIR Form 1601E for the month of December 2006 with reference no. 020700001412470 filed on January 13, 2007
P-74	Annual Information Return on Creditable Income Taxes Withheld (BIR Form 1604E) for Y2006
P-74-a	BIR Filing Reference No. 230700001498080 filed on March 01, 2007
P-74-b	Alphalist of Payees subject to Expanded Withholding Tax as of December 31, 2006
P-75	Judicial Affidavit of Helen Herrera dated 14 June 2016
P-75-a	Signature of Helen Herrera
P-76	Judicial Affidavit of Daniel P. Julaton
P-76-a	Signature of Daniel P. Julaton
P-77	Judicial Affidavit of Gemma Suazo
P-77-a	Signature of Gemma Suazo
P-78	Judicial Affidavit of Adan T. Delamide
P-78-a	Signature of Adan T. Delamide
P-79	ICPA Report
P-79-a	Signature of Adan T. Delamide
P-83	Assessment Notice
P-84	Formal Letter of Demand – amended, dated 03 December 2010
P-85	BIR Decision, promulgated on 03 December 2015 received on 09 December 2015

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P-86	Audited Financial Statements for Y2006
P-87	Working trial balance for Y2006
P-88	Salaries – production workers general ledger
P-89	Salaries – office staff general ledger
P-90	Income tax computation, 31 December 2006
P-91	Reconciliation of the AFS and BIR Form 1702, 31 December 2006
P-92	Cost sharing agreement/Consultancy Agreement between Vitalo Plastics NV and Vitalo Industries NV
P-93	Interest expense general ledger
P-94	Interest income general ledger
P-96	BIR Form 1604 CF schedule 5 as of 31 December 2006
P-97	BIR Form 1604 CF schedule 6 as of 31 December 2006
P-98	BIR Form 1604 CF schedule 6 as of 31 December 2007
P-100	PEZA Certificate of Registration No. 96-088
P-101	PEZA amended certificate of registration No. 96-088
P-102	PEZA certification no. 2006-740
P-103	PEZA certification no. 2006-0883
P-104	PEZA registration agreement
P-105	PEZA supplemental agreement
P-105-1	PEZA second supplemental agreement
P-106	Permit to use manual loose-leaf sales invoice and delivery receipt no. 59-2011
P-107	BIR Certificate of Registration dated 02 December 2011
P-108	BIR Certificate of Registration dated 18 April 2008
P-109	BIR Certificate of Registration dated 03 April 2002
P-110 to P-124	Supporting documents for interest income such as invoices, receipts and general ledgers
P-125 to P-136	Supporting documents for utilities such as invoices, receipts and general ledgers
P-137 to P-139	Supporting documents for fringe benefits such as finance lease, official receipts and invoices
P-140 to P-199	Supporting documents for outside services including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-200 to P-324	Supporting documents for operating lease including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-325 to P-1073	Supporting documents for repairs and maintenance including invoices, vouchers, ledgers, PEZA certifications, adjustments,

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	accounting accruals, reversals and acknowledgement receipts
P-1074 to P-1159	Supporting documents for professional fees including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-1160 to P-1601	Supporting documents for printing job and office supplies such as including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-1602 to P-2072	Supporting documents for miscellaneous expenses including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-2073 to P-2282 *Excluding P-2132 and P-2133*	Supporting documents for freight out allocation from freight and transportation expense including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-2283 to P-2331	Supporting documents for trucking and JIT Hub including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-2332 to P-2343	Supporting documents for freight accruals including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-2344 to P-2356	Supporting documents for expenses directly charged to freight out including invoices, vouchers, ledgers, PEZA certifications, adjustments, accounting accruals, reversals and acknowledgement receipts
P-2357 to P-2386	Supporting documents for management fee such as consultancy agreement, details of accruals, income tax computation and reconciliation of AFS and ITR, and related ledgers, vouchers, official receipts and invoices
P-2387 to P-2777	Supporting documents for cash receipt transactions such as details of accruals, income tax computation and reconciliation of AFS and ITR, and related ledgers, vouchers, official receipts and invoices
P-2778 to P-3127	Supporting documents for check disbursement transactions such as details of accruals, income tax computation and reconciliation of AFS and ITR, and related ledgers, vouchers, official receipts and invoices
P-3128	Retirement contribution plan

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On December 4, 2017, respondent presented his lone witness, Revenue Officer Wilma Enrique[53].

On June 19, 2018, respondent filed his Motion to Admit Attached Formal Offer of Evidence and the attached Formal Offer of Evidence. In a Resolution dated July 20, 2018[54], the Court granted the Motion to Admit Attached Formal Offer of Evidence and admitted the attached Formal Offer of Evidence. In the same resolution, the Court admitted all of respondent's exhibits, except Exhibits "R-2", for failure to identify the exhibit, and "R-11", for failure to present the original for comparison.

Respondent's admitted documentary exhibits are the following:

Exhibit:	Description:
R-1	Letters of Authority No. 00018873 dated 18 October 2007
R-3	Revalidation Notice dated April 23, 2009
R-4	Notice of Informal Conference dated November 6, 2009
R-5	Letters of Authority Nos. 0004547 dated 29 March 2010
R-6	Preliminary Assessment Notice (PAN) relating to LOA 0004547 dated 22 March 2010
R-7	Final Assessment Notice (FAN) dated 15 April 2010 and Notices relating to LOA No. 0004547
R-8	Amended PAN dated 9 September 2010
R-9	Amended Formal Letter of Demand (FLD) and Assessment Notices dated 03 December 2010
R-10	Preliminary Collection Letter dated 12 August 2010
R-12	BIR Records consisting of one folder

On August 23, 2018, petitioner filed its Memorandum.[55] On September 24, 2018, respondent filed his Memorandum after the Court granted[56] his Urgent Motion for Extension to File Memorandum.[57]

[53] Docket (Vol. III), Order dated December 4, 2017, p. 1252.
[54] Docket (Vol. IV), pp. 1305-1306.
[55] Docket (Vol. IV), pp. 1307-1385.
[56] Docket (Vol. IV), Order dated August 31, 2018, p. 1391.
[57] Docket (Vol. IV), pp. 1386-1390.

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The case was submitted for decision on October 5, 2018[58] considering the filing of petitioner's Memorandum on August 23, 2018[59] and respondent's Memorandum filed on September 24, 2018.[60]

Petitioner's Arguments[61]

Petitioner maintains that compliance with the due process requirements under Section 228 of the NIRC and Revenue Regulations (RR) No. 12-99 is essential to sustain the validity and legality of assessments. Petitioner argues that considering that the Notices of Informal Conference and PAN allegedly sent on August 3, 2010 and FAN No. 57-2006 allegedly sent on December 3, 2010 were not received by petitioner, as they were sent to petitioner's old address, the FLD/FAN must fail.

Petitioner contends that to allow respondent to use the doctrine of estoppel to shield itself from non-compliance of the due process requirement under RR NO. 12-99, as amended, which provides the guidelines/limitations to the BIR's authority to assess taxes would be killing the taxpayer which has religiously and correctly paid its dues.

Further, petitioner maintains that the issuance of two LOAs is void and that the PCL cannot indiscriminately increase the amount assessed based on the FAN. Petitioner also avers that the assessments for taxable year 2006 is void and that prescription has already set in.

Finally, petitioner argues that the assessment has no basis in fact and in law and that the imposition of interests and penalties is without semblance of legality.

[58] Docket (Vol. IV), Resolution dated October 5, 2018, p. 1413.
[59] Docket (Vol. IV), pp. 1307-1385.
[60] Docket (Vol. IV), pp. 1392-1412.
[61] Docket (Vol. IV), pp. 1319-1382.

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Respondent's Counter-Arguments[62]

Respondent, on the other hand, argues that the assessment against petitioner for deficiency income tax, final withholding tax, fringe benefit tax and expanded withholding tax for taxable year 2006 has long become final, executory, and demandable. Respondent contends that petitioner was able to protest and file its replies to the Formal Letter of Demand relating to Letter of Authority No. 4547; Preliminary Collection Letter dated May 25, 2011; and Final Notice Before Seizure dated August 12, 2012 despite the fact that the same were sent to the old registered business address of petitioner.

Further, respondent argues that petitioner executed a Waiver of the Defense of Prescription that validly extended respondent's period to assess petitioner. According to respondent, the FLD and FAN received by petitioner were issued well within the prescriptive period.

Respondent maintains that petitioner is liable for deficiency income tax, deficiency final withholding tax (income payments to non-resident foreign corporation), deficiency FWT (royalties and interest expense), deficiency FBT, and deficiency EWT.

ISSUES

The lone issue submitted by the parties for resolution of this Court is:[63]

> Whether petitioner is liable to pay the aggregate amount of Sixty Three Million Three Hundred Twenty Two Thousand Nine Hundred Fifty Five Pesos and 83/100 (₱63,322,955.83) as deficiency income tax (special rate), income tax (regular rate), final withholding tax (income payment), final withholding tax (royalty and interest), fringe benefit tax and expanded withholding tax for taxable year 2006 plus 25% surcharge and 20% deficiency and delinquency interest for late payment pursuant to Sections 248 and 249 of the Tax Code, as amended.

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62 Docket (Vol. IV), pp. 1393-1401.

63 Docket (Vol. I), Joint Stipulation of Facts and Issues, Item 4, p. 272.

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The crux of the controversy is the alleged receipt of the assessment notices by petitioner which the latter denies wailing deprivation of due process on its part rendering the said notices invalid. Thus, the Court shall focus its discussion on the service and receipt of these documents as this will determine whether petitioner was indeed not accorded due process required in the issuance of assessment notices. 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.[64]

Thus, the law requires respondent to inform in writing the taxpayer, such as petitioner, of the law and the facts upon which the assessment is made. Otherwise, the assessment is void. This condition is explicitly required in Section 228 of the NIRC, as amended and implemented under Revenue Regulations (RR) No. 12-99, specifically in Section 3 thereof.

Section 228 of the NIRC of 1997, as amended, lays down the procedure in the issuance of tax deficiency assessment, viz:

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

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

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

xxx xxx xxx (*Emphasis supplied*)

To implement the foregoing provisions, RR No. 12-99 was issued which specifies the due process requirement to be observed in issuing deficiency tax assessments. Pertinent portions of Section 3 of the said RR reads:

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.-

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

3.1.1 Notice for informal conference.-The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within

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fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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

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3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX 8 hereof).

The same shall be sent to the taxpayer only by registered mail or by personal delivery.

If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the

> following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[65]

As part of the due process requirements, the notices relative to tax assessment must be served on and received by the taxpayer. In the instant case, petitioner denies receipt of the Notice of Informal Conference, PAN, FAN, and Amended PAN and Amended FAN, although it confirmed receipt of the PCL, FNBS, and, WDL.

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

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

The facts to be proven in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; an (b) that it was mailed. Once these facts are proved, the presumption

[65] *Commissioner of Interval Revenue vs. Fitness by Design, Inc.,* GR. No. 215957, November 9, 2016.

is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail.[66]

In the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,*[67] the Supreme Court held when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3 (v) of Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

Moreover, when service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the *registry receipt issued by the mailing office* and *an affidavit of the person mailing* of facts showing compliance with Section 13, Rule 13[68] of the 1997 Rules on Civil Procedure.[69] Absent one or the other, or worse both, there is no proof of service.[70] The original copies of the registry receipt or, in lieu thereof, the unclaimed notice and a certification from the postmaster of the issuance of notice, should be presented.

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[66] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010 citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue, G.R. No.* G.R. No. 157064, August 7, 2006.

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

[68] RULE 13

Filing and Service of Pleadings, Judgments and Other Papers

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Sec. 13. Proof of service

Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the personal mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shal lbe made by such affidavit and the registry receipt issued by the mailing offfice. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[69] *Republic of the Philippines vs. Resins, Incorporated,* G.R. No. 175891, January 12, 2011.

[70] *The Government of the Philippines vs. Victoriano Aballe, et al.; Republic of the Phils.vs. Salvador Wee,* G.R. No. 147212, March 24, 2006.

In its formal offer of evidence, respondent offered the NIC dated November 6, 2009, PAN relating to LOA 0004547 dated March 22, 2010, and the Amended PAN dated September 9, 2010[71] as proof that due process was observed. Records would also show that aside from the NIC, PAN, and Amended PAN respondent also issued other notices to petitioner:

Notice	**Attachment**
NIC dated November 6, 2009	Registry return receipt dated November 11, 2009
PAN dated March 22, 2010	Registry return receipt signed by Mayanid on April 8, 2010
Formal Letter of Demand dated April 15, 2010 with Assessment Notice dated April 15, 2010	None
Amended PAN dated September 9, 2010	Registry return receipt signed by SG Nacario, Edwino on September 20, 2010
Amended Formal Letter of Demand dated December 3, 2010 with Assessment Notice dated December 3, 2010	Registry return receipt signed by SG Nacario, Edwino on December 14, 2010

Except for the FLD dated April 15, 2010 with Assessment Notice dated April 15, 2010 without a registry receipt nor return card, it is noteworthy that the notices were all mailed to petitioner's address at "*Bldg. I Panorama Compound, LIIP, Mamplasan Biñan, Laguna*", notwithstanding the fact that petitioner already transferred to another business address. The records also indicate that petitioner admitted the receipt of the PAN, which was sent through registered mail at its old address, as well as the FAN. However, petitioner clarified through its witness, Ms. Gemma Suazo, during cross-examination on September 15, 2016 how the PAN and FAN, even though addressed to petitioner at its old address, was actually received at its new location[72]:

ATTY. MULI:
Q. You mentioned that petitioner has already transferred its business address, correct?

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[71] BIR Records, Exhibit "R-8", pp. 692-697.
[72] TSN dated September 15, 2016, pp. 5 to 9.

MS. SUAZO:
A. Yes, Your Honors.

ATTY. MULI:

Q. Would you know who is currently occupying the old business address of petitioner?

MS. SUAZO:
A. Your Honors, the old petitioner address... it was so long ago, I don't know who is the current owner of that.

ATTY. MULI:

Q. Who is the current owner?

MS. SUAZO:
A. I don't know.

ATTY. MULI:

Q. Okay. However, you mentioned in your Judicial Affidavit that the Security Guard in the old premises handed you a Preliminary Assessment Notice on April 8, if I'm not mistaken, 2010?

MS. SUAZO:
A. It has been forwarded to our Security Guard. The Security Guard, the one forwarded me.

ATTY. MULI:

Q. So you have contact?

MS. SUAZO:
A. No, no. Our current security.

ATTY. MULI:
Q. How did they forward it to you?

MS. SUAZO:
A. I don't know, Your Honors, because the one in the old address is not our employee, as well as he is not our...

ATTY. MULI:
Q. Yes, but you mentioned in your Judicial Affidavit that even though it was sent to the old address, you were able to get it because as you mentioned earlier, it was forwarded to you?

MS. SUAZO:
A. It was forwarded by our current guard premises in Vitalo Packaging. The one guard on-duty. Our guard on-duty in our premises. He was the one forwarded.

JUSTICE CASTAÑEDA:
Q. So it was forwarded to you when?

MS. SUAZO:
The one that you mentioned.

ATTY. MULI:
April 8, Your Honors. I don't have the copy.

MS. SUAZO:
A. The April 8 [*sic*].

JUSTICE CASTAÑEDA:
Let her take a look at her Judicial Affidavit. Give her a copy.

ATTY. MULI:
I don't have a copy of your Judicial Affidavit.

MS. SUAZO:
It was April 18, 2008.

ATTY. MULI:
You mentioned that this PAN... So you're testifying that the Preliminary Assessment Notice was received by your security guard in the new address? Is that what you are saying, Ms. Witness?

MS. SUAZO:
A. No, Your Honors. The PAN has been sent to our old address which has been received by the security guard on that premises, on that old address, and I just found out that it has been forwarded through our guard on our premises in the Vitalo Packaging.

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JUSTICE CASTAÑEDA:
All right. The question is, when did you actually receive that PAN?

MS. SUAZO:
A. The one that the PAN, Your Honors, has been actually received... I'll just browse, Your Honors.

ATTY. TAGANAS:
A. May I just assist, Your Honors.

JUSTICE CASTAÑEDA:
Yes, please refer to the question number and answer.

MS. SUAZO:
A. It was April 26. 2010, Your Honors. It was received by myself thru the guard.

ATTY. MULI:
Q. So this is the Formal Letter of Demand?

ATTY. MULI:
A. No. The Formal Letter of Demand was... I'm sorry, Your Honors. April 8, 2010 was the PAN, then the Formal Letter of Demand was forwarded to me last April 26, 2010.

ATTY. MULI:
Q. So ultimately Ms. Witness, what you are saying is that you received all the notices, the Preliminary Assessment Notice and the Final Assessment Notice even though it was sent to the old address?

MS. SUAZO:
A. Because it was [*sic*] been forwarded...

ATTY. MULI:
Q. Ms. Witness, can you please answer yes or no?

MS. SUAZO:
A. Yes.

ATTY. MULI:
Q. You received the PAN and the FAN even though it was sent to the old address?

MS. SUAZO:
A. Yes, Your Honors.

It is clear from the foregoing that the assessment notices were not properly addressed to petitioner.

Section 11 of RR No. 12-85 reads as follows:

> SECTION 11. *Change of Address.* - **In case of change of address, the taxpayer must give 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 <u>in case of failure to do so</u>, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply**. *(Emphasis supplied)*

Based on the foregoing provision, any taxpayer intending to change his address must give a written notice to the RDO having jurisdiction over his former legal residence and/or place of business; otherwise, any communication previously sent to the said former legal residence or place of business shall be considered valid and binding for purposes of the period within which to reply.

In this case, it is clear that petitioner complied with the above-quoted provision. The Court opines that respondent was well-informed of petitioner's transfer of business address from *Bldg. 1 Panorama Compound, CNB Street, Export Processing Zone Authority (EPZA), Laguna International Industrial Park (LIIP), Binan, Laguna* to *Lot 1B, No. 118, Phase 5 East Main Ave. Laguna Technopark Laguna.* The pieces of evidence establishing the same are numerous. There are documents proving that petitioner updated its registration information, such as BIR Form No. 1905[73] and Certificate of

[73] Docket (Vol. III), Exhibit "P-2", p. 912.

Registration OCN 1RC000031087 issued by RDO No. 57[74], reflecting Lot 1B, No. 118, Phase 5 East Main Ave. Laguna Technopark Laguna as the new registered address of petitioner. As early as 2006, petitioner already indicated the same as its registered address in its tax returns, including BIR Form Nos. 1601-C[75], 1601-F[76], 1601-E[77], 1603[78] and 1604-E[79].

Clearly, the foregoing documents which were received or issued by respondent indicate that petitioner's address is at *"Lot 1-B No. 118 Phase 5 East Main Ave. Laguna Technopark Binan Laguna 4024."* Hence, respondent should have sent the PAN and the FAN to the said address. Having failed to do so, there was no valid service of said notices to respondent.

It is respondent's duty to send the PAN and FAN to the proper address of petitioner to ensure its receipt and in order to avail of the disputable presumption provided under Section 3 (v) of Rule 131 of the Rule of Court. Considering that petitioner denies receiving the assessment notices, and respondent is unable to present evidence that the PAN and FAN were sent to petitioner's proper address, the disputable presumption that the assessment notice was received in the regular course of mail will not lie. Failure of respondent to prove receipt of the assessment by petitioner leads to the conclusion that no assessment was issued. There being no valid assessment, when prescription sets in, the taxpayer can no longer be held liable for the alleged discrepancies.

In the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,*[80] the Supreme Court emphasized the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice, which was timely released, mailed and sent. Thus, the presumption of regularity in the ordinary course of mail is merely disputable, and when the taxpayer addressee denies the receipt of the disputed assessment – delivered and served through registered mail – issued by respondent against the taxpayer-addressee, the burden of proof is now shifted to respondent to present and offer

[74] Exhibit "P-108", part of the exhibits pre-marked by the Independent Certified Public Accountant.
[75] Docket (Vol. III), Exhibits "P-33" to "P-43", pp. 1058 to 1088.
[76] Docket (Vol. III), Exhibits "P-55" to "P-56", pp. 1093-1116.
[77] Exhibits "P-62" to "P-73", pp. 1145-1169.
[78] Docket (Vol. III), Exhibits "P-58" to "P-61", pp. 1133-1144.
[79] Exhibit "P-74", pp. 1170-1171.
[80] G.R. No. 157064, August 7, 2006.

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evidence to prove that the same was duly delivered and indeed received by the taxpayer-addressee.

Clearly, even if the old address is assumed to be the correct registered address of petitioner, respondent nonetheless failed to establish that the PAN and the FLD with Assessment Notices sent by it through registered mail were actually received by petitioner. These BIR notices were received by an individual other than its authorized representative, and the FAN was in fact received by a security guard who is not even an employee of petitioner. Significantly, there is no indication that SG Nacario E.J. or Mayanid have been authorized to receive any communication for and in behalf of petitioner. Respondent failed to present any evidence to show that they served said notices to petitioner's authorized representative. Without proof of their authorization, or at the very least their connection with petitioner, their receipt of the notices is of no moment. Their receipt cannot be deemed that of petitioner.

Moreover, receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.[81] Respondent also failed to present a certification of the postmaster that the notice was duly issued and delivered to petitioner such that service by registered mail may be deemed completed.[82]

Perusal of the records and of the registry return receipts shows that the signatures therein are unidentified and unauthenticated. Revenue Officer Wilma Enriquez testified on redirect examination on December 4, 2017 regarding the delivery of the FAN/FLD:[83]

> ATTY. DORIA:
> Ms. Witness, you answered that preliminary assessment notice (PAN) and formal letter of demand (FLD) were both sent to the former address of the petitioner. Can you please explain why those letters were sent to the former address of the petitioner?
> WITNESS:
> Your Honors, in some cases, some notice sent to the old address of the petitioner was received by the representative

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[81] *The Government of the Philippines vs. Victoriano Aballe, et al.; Republic of the Phils. vs. Salvador Wee,* G.R. No. 147212, March 24, 2006.
[82] *In the Matter of the Petition for Habeas Corpus of Benjamin Vergara, et al. vs. Hon. Francisco C. Gedorio, Jr., et al.,* G.R. No. 154037, April 30, 2003.
[83] TSN dated December 4, 2017, pp. 12-13.

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of the company, that is why the following letters were also sent to the same address.

ATTY. DORIA:
Nothing further, Your Honors.

JUSTICE CASTAÑEDA
When was the notice of change of address given by the petitioner?

WITNESS
Your Honors, based on the records of the present case, April 18, 2008 when the company filed an application for registration of

JUSTICE CASTAÑEDA
So, there was already a changed [*sic*] of address when the preliminary assessment notice (PAN) and the final assessment notice (FAN) were sent. So, this was received by the company notwithstanding the change of address. Who received them?

WITNESS:
Based on the records, it was sent by registered mail, it was received by one Lacario and the other one... (interrupted)

JUSTICE CASTAÑEDA:
At any rate, did the petitioner protest the preliminary assessment notice (PAN)?

WITNESS:
Yes, Your Honors.

It was not established whether such signatures indeed belong to petitioner's authorized representatives. Stated otherwise, the identity and authority of the persons whose signatures appear on the registry return receipts were not established. Thus, respondent failed to prove that the PAN and FAN were properly and duly served upon and received by petitioner, thus, the assessments made against petitioner for deficiency income tax, FWT, FBT, and EWT for CY 2007 are void for failure to accord petitioner due process in the issuance thereof.

The Court has been consistent in its ruling that the registry return card must be authenticated to serve as proof of receipt of

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letters sent through registered mail. To be sure, the presentation of the registry card with an unauthenticated signature is not equivalent to proof that a letter sent through registered mail was actually received by the addressee.[84]

In *Ting vs. Court of Appeals*[85], the Supreme Court held:

> "Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.
>
> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that [a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.
>
> In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. **All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery."** (*Emphases supplied*)

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[84] *Jesusa T. Dela Cruz vs. People of the Philippines,* G.R. No. 163494, August 3, 2016 citing *Jaime Alferez vs. People of the Philippines, et al.*, G.R. No. 182301, January 31, 2011.
[85] G.R. No. 140665, November 13, 2000.

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

The fact that petitioner was able to protest the FAN does not cure respondent's violation of petitioner's right to due process. Thus, petitioner's filing of a protest to the FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."[86]

Taking all the foregoing into consideration, the Court finds that no competent evidence was presented by respondent to prove the actual receipt of petitioner of the LOA, NIC, PAN and the FLD with Assessment Notices. As already emphasized, strict compliance with the due process requirement is necessary for a valid tax assessment.

Having failed to prove compliance thereof, respondent denied petitioner of its right to due process.

Accordingly, the deficiency tax assessments against respondent are null and void for having been issued in violation of the due process requirements under the law and RR No. 12-99.

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.

Without a valid assessment, the subsequently issued PCL, FNBS, and WDL are likewise illegal since a void assessment bears no valid fruit.

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[86] *Pilipinas Shell Petroleum Corporation v. CIR,* G.R. No. 172598, December 21, 2007.

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WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision of respondent dated December 3, 3015, the FLD/FAN dated April 15, 2010 and December 3, 2010, the PCL dated May 25, 2011, the FNBS dated August 12, 2011, and the Warrant of Distraint and/or Levy dated November 24, 2011 are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

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

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice