REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALTIMAX BROADCASTING CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10044

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

Promulgated:

OCT 06 2021

1:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on March 4, 2019, prays for the cancellation and withdrawal of the assessments issued by respondent against petitioner, for its alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), for the taxable year 2013, in the amount of ₱18,903,909.58, including interest, surcharge and penalties.[1]

THE PARTIES

[1] Summary of the Case, *Pre-Trial Order* dated October 4, 2019, Docket, p. 312.

Petitioner Altimax Broadcasting Co., Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 7, Revenue District Office (RDO) No. 41, with Taxpayer Identification Number 272-993-967-000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant claims for refund, or tax credit of erroneously paid or overpaid taxes, as provided by law.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 10, 2014, petitioner received the *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 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.[5]

Subsequently, on January 31, 2019, petitioner 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 ₱18,903,909.58.[6]

On February 19, 2019, petitioner filed with the BIR Revenue Region No. 7 a letter, manifesting that petitioner did not receive a *Preliminary Assessment Notice* (PAN) and *Final Assessment Notice* (FAN), as required under Section 228 of the Tax Code, as implemented by BIR Revenue Regulations (RR) No. 12-99, as amended; and requesting the BIR to defer from any further action, in connection with the WDL, and for copies of the PAN and FAN, in order for petitioner to be adequately informed of the items of assessment from which the alleged deficiency tax liabilities were based.[7] *gr*

[2] Exhibit "P-1", Docket, pp. 328 to 338.
[3] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 304; Exhibit "P-2", Docket, p. 339.
[4] Par. 2, Stipulation of Facts, JSFI, p. 304.
[5] Par. 3, Stipulation of Facts, JSFI, pp. 304 to 305; Exhibit "P-3", Docket, pp. 340 to 341.
[6] Exhibit "P-5", Docket, p. 344.
[7] Exhibit "P-6", Docket, pp. 345 to 347.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *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.[8]

During the hearing held on April 3, 2019 for petitioner's *Motion to Suspend Collection of Taxes,*[9] petitioner presented Mr. James Kenneth Venta,[10] the Group Comptroller and Administrative Head of Bethlehem Holdings, Inc. and petitioner. In support of the said *Motion*, petitioner also orally offered Exhibits "P-6", "P-7", "P-8", "P-9" and "P-9-A", which the Court admitted, there being no objection from respondent. In the same hearing, the Court granted petitioner's *Motion for Suspension of Collection of Taxes*, subject to the posting of acceptable surety bond in the amount of ₱18,903,909.58.

On April 26, 2019, respondent filed his *Answer*,[11] raising certain special and affirmative defenses, to wit: (1) the Court has no jurisdiction on the *Petition*, and the assessment has long become final, executory, and demandable; (2) in the instant case, petitioner failed to timely file a valid protest to the *Final Assessment Notices*, which were served to petitioner through registered mail at its address at Unit 507 The Taipan Place F. Ortigas Jr., San Antonio, Ortigas Center, Pasig City; (3) petitioner'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 petitioner's still had the right to elevate the instant case with this Court, petitioner failed to elevate the same within thirty (30) days from the receipt of the *Warrant of Distraint and/or Levy* (WDL); and (5) as admitted by the petitioner, the WDL was received by petitioner on January 31, 2019 but the instant case was filed only on March 4, 2019.

The Pre-Trial Conference was set on June 6, 2019.[12] Both respondent's *Pre-Trial Brief* and petitioner's *Pre-Trial Brief* were filed on May 31, 2019.[13]

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[8] Docket pp. 12 to 34.
[9] Minutes of the hearing held on, and Order dated, April 3, 2019, Docket, pp. 177 to 179.
[10] Exhibit "P-9", Docket, pp. 79 to 88.
[11] Docket, pp.187 to 191.
[12] *Notice of Pre-Trial Conference* dated May 10, 2019, Docket, pp. 220 to 221.
[13] Docket, pp. 226 to 229, and 230 to 237, respectively.

At the hearing held on June 6, 2019, upon agreement of both parties, the case was referred to mediation. Thus, the Court ordered them to immediately proceed and to 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. [14]

However, the parties eventually decided not to mediate. [15] Thus, the pre-trial was set anew, and was held, on August 29, 2019.[16]

On September 27, 2019, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[17] The Pre-Trial Order dated October 4, 2019 was then issued by the Court, [18] approving and adopting the said JSFI, and deeming the termination of the pre-trial.

Trial for the main case then ensued.

Petitioner presented its documentary and testimonial evidence. It offered again the testimony of Mr. James Kenneth Venta.[19]

Petitioner filed its *Formal Offer of Evidence* on October 14, 2019.[20] Respondent failed to file his comment thereon.[21] In the Resolution dated November 21, 2019, the Court admitted all of petitioner's exhibits.[22]

Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of RO Zaldy Dioscoro I. Dy.[23]

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[14] Minutes of the hearing, and Order dated, June 6, 2019, Docket, pp. 278 to 279; Resolution dated June 6, 2019, Docket, p. 281.

[15] *No Agreement to Mediate* dated July 18, 2019, Docket, p. 286.

[16] *Resolution* dated July 26, 2019, Docket, p. 290; Minutes of the hearing held on, and Order dated, August 29, 2019, Docket, pp. 292 and 302, respectively.

[17] Docket, pp. 304 to 310.

[18] Docket, pp. 312 to 315.

[19] Exhibit "P-7", Docket, pp. 241 to 250; Minutes of the hearing held on, and Order dated, October 7, 2019, Docket, pp. 316 to 317.

[20] Docket, pp. 320 to 326.

[21] Records Verification dated October 31, 2019 issued by the Judicial Records Division of this Court, Docket, p. 355.

[22] Docket, pp. 357 to 358.

[23] Exhibit "R-4", Docket, pp. 368 to 371; Minutes of the hearing held on, and Order dated, January 20, 2020, Docket, pp. 386 to 388.

Respondent submitted the *BIR Records* of the case on February 10, 2020.[24]

On February 17, 2020, respondent filed its *Formal Offer of Evidence*.[25] Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on February 24, 2020.[26] In the Resolution dated June 15, 2020,[27] the Court admitted all of respondent's exhibits; and ordered the parties to file their respective memorandum, within thirty (30) days from receipt thereof.

On July 17, 2020, petitioner filed its *Memorandum*.[28] Respondent, however, failed to submit his memorandum.[29]

The present case was considered submitted for decision on October 12, 2020.[30]

THE ISSUES RAISED BY THE PARTIES

The parties have failed to stipulate a common issue, and thus, have submitted separate issues to be resolved in this case, to wit:

"For Petitioner:

> WHETHER OR NOT THERE WAS AN ASSESSMENT MADE IN ACCORDANCE WITH THE LAWS AND REGULATIONS PROTECTING PETITIONER'S RIGHT TO DUE PROCESS;
>
> AND
>
> WHETHER OR NOT THE WARRANT OF DISTRAINT AND/OR LEVY WAS VALIDLY ISSUED, PURSUANT TO A FINAL AND EXECUTORY ASSESSMENT.

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[24] *Compliance with Explanation* dated January 20, 2020, Docket, pp. 389 to 390.
[25] Docket, pp. 394 to 396.
[26] Docket, pp. 397 to 399.
[27] Docket, pp. 402 to 403.
[28] Docket, pp. 431 to 454.
[29] Records Verification dated October 6, 2020 issued by the Judicial Records Division of this Court, Docket, p. 458.
[30] Resolution dated October 12, 2020, Docket, p. 459.

For Respondent:

> WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE QUESTIONED DEFICIENCY INCOME TAX, VALUE-ADDED TAX AND EXPANDED WITHHOLDING TAX."[31]

Petitioner's arguments:

Petitioner argues that the assessments for deficiency income tax, VAT, and EWT, are null and void because it did not receive the PAN and *Formal Letter of Demand* (FLD)/FAN, as required under Section 228 of the Tax Code, as amended, and RR No. 12-99; and that the issuance of WDL has no legal basis, because no valid assessment was made.

Respondent's counter-arguments:

Based on his *Answer*, respondent contends that the Court has no jurisdiction on the *Petition*, and the assessment has long become final, executory, and demandable; that petitioner failed to timely file a valid protest to the *Final Assessment Notices*, which were served to petitioner through registered mail at its registered address at Unit 507 The Taipan Place F. Ortigas Jr., San Antonio, Ortigas Center, Pasig City; that petitioner's transfer to its new address was approved only on November 7, 2016 as indicated in its Certificate of Registration; that granting without admitting that petitioner still had the right to elevate the instant case with this Court, petitioner failed to elevate the same within thirty (30) days from the receipt of the *Warrant of Distraint and/or Levy* (WDL); and that as admitted by the petitioner, the WDL was received by petitioner on January 31, 2019, but the instant case filed only on March 4, 2019.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

The Court has jurisdiction over the instant case.

[31] Issue, JSFI, Docket, p. 305.

Respondent contends that this Court is without jurisdiction to entertain the present case based on two (2) grounds, to wit: (1) petitioner failed to elevate the case within thirty (30) days from receipt of the subject WDL; and (2) the assessment has long become final, executory and demandable.

For the *first* ground, respondent points out that as admitted by petitioner, the WDL was received by petitioner on January 31, 2019, but the instant case was filed only on March 4, 2019. Anent the *second* ground, according to respondent, petitioner failed to timely file a valid protest to the FANs which were served to petitioner, through registered mail at its BIR registered address at Unit 507 The Taipan Place F. Ortigas Jr., San Antonio, Ortigas Center, Pasig City.

Said grounds, however, are untenable.

As for the *first* ground, Section 11 of Republic Act (RA) No. 1125,[32] as amended by RA No. 9282,[33] states the period to appeal decisions, rulings, and inactions of respondent, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> xxx xxx xxx." *(Emphasis added)*

Based on the foregoing provisions, an appeal before this Court must be filed within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

In this case, it is undisputed that petitioner received the subject WDL on January 31, 2019.[34] Counting thirty (30) days from the said *gr*

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[32] AN ACT CREATING THE COURT OF TAX APPEALS.
[33] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

date and pursuant to the above-quoted Section 11 of RA No. 1125, as amended by RA No. 9282, petitioner has until **March 2, 2019** to appeal the said WDL.

It is here not doubted that the instant *Petition for Review* was filed on **March 4, 2019.**[35] However, the same should ***not*** be considered as filed out of time, so as to divest this Court of jurisdiction.

Section 1 of Rule 22, Rules of Court, reads:

> "SECTION 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or even from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.**" *(Emphasis and underscoring added)*

As applied to this case, March 2, 2019, being the last day or 30th day from the date of receipt of the subject WDL, fell on a Saturday. Thus, the filing of the instant *Petition for Review* on March 4, 2019, the next working day, was timely made.

Such being the case, this Court has jurisdiction to entertain the present appeal.

With regard to the *second* ground relied upon by respondent in claiming that this Court is without jurisdiction, *i.e.*, that the assessment has long become final, executory and demandable, the Court finds that the subject tax assessments are void, as will be shown momentarily. To stress, a void assessment bears no valid fruit.[36] Such being the case, the subject tax assessments could not have attained finality.

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[34] Exhibit "P-5", Docket, p. 344.
[35] Docket pp. 12 to 34; Refer also to the Summary of the Case, *Pre-Trial Order* dated October 4, 2019, Docket, p. 312.
[36] *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

Respondent violated petitioner's right to due process in the issuance of the subject tax assessments. Thus, the same are void.

Petitioner submits that respondent failed to observe the mandatory due process requirements laid down under Section 228 of the Tax Code, as amended, RR No. 12-99, as amended, and prevailing jurisprudence; and that its right to be informed in writing of the alleged assessments made against it was violated when petitioner did not receive a copy of the PAN, FAN/FLD, and FDDA relative to the taxable year 2013 audit.

For his part, respondent contends that the *Final Assessment Notices* were served to petitioner through registered mail at its registered address at Unit 507 The Taipan Place F. Ortigas Jr., San Antonio, Ortigas Center, Pasig City.

We rule in favor of petitioner. The subject notices were not properly served by respondent or the BIR.

Section 3.1.6 of RR No. 12-99,[37] as amended by RR No. 18-2013,[38] reads, in part, as follows:

> "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**

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

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

his duly authorized representative through the following modes:

xxx xxx xxx

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

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

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

Based on the foregoing provisions, one of the modes of service of the PAN, FLD, and FAN is by service through registered mail. As for such mode of service, the same must be made by sending the said notices *"to the registered or known address of the* [concerned] *party"* and *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. Furthermore, it is required that the "[t]*he server shall accomplish the bottom portion of the notice"* and *"shall also make a written report under oath before a Notary Public or any person authorized to administer oath*[s] *under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information."*

Relative thereto, 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.[39]

Considering that petitioner directly denies due receipt of the subject notices, the burden was shifted to respondent to prove that the same were indeed received by petitioner or by its authorized representative.

Relative to the address used by the BIR on the PAN and FAN/FLD, *i.e.*, Unit 507, The Taipan Place, F. Ortigas Jr. Road, San Antonio, Ortigas Center 1605 Pasig City, petitioner questions the use of the same. However, the above-quoted Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, is clear that the subject notices should be served to the concerned taxpayer's **registered or known address**. Thus, the BIR can use either of the same.

This case is bereft of any indication as to the effectivity of petitioner's transfer to its present registered address (*i.e.*, 3/F Globe Telecom Tower 1, Pioneer Highlands corner Madison Streets, Mandaluyong City).[40] Based on the Certificate of Registration issued by the BIR in favor of petitioner,[41] it is clear that the latter transferred from Revenue District Office (RDO) No. 043A to 041, but the same does not specifically indicate as to when did the actual transfer took place or the effectivity date of the said transfer. Thus, considering that petitioner has not presented any evidence to show

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[39] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[40] Refer to Exhibit "P-2", Docket, p. 339.
[41] *Id.*

the effectivity of its transfer to the new registered address, We sustain the one used by the BIR.

In any event, despite sustaining the address used by the BIR in the subject notices, We are still confronted with the issue of whether the subject notices were properly served to petitioner thru registered mail.

To prove the service of the PAN dated October 6, 2016, respondent presented Registry Receipt No. RD 674 559 028 ZZ;[42] and for the service of the FLD/FAN dated October 27, 2016, respondent presented Registry Receipt No. RD 663 033 837 ZZ.[43]

Thus, the only evidence adduced by respondent in proving the fact of service of the subject notices are the copies of the corresponding Registry Receipts issued by the Post Office. Unfortunately, these hardly suffice to prove that the said notices were indeed served and received by petitioner or any of its authorized representative/s, pursuant to the above-mentioned rules. These Registry Receipts merely proved the fact of mailing,[44] and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented by respondent that the said PAN and FAN/FLD were actually served and received by petitioner or any of its authorized representative(s). On this score, the case of *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*[45] is significant. In the said case, the Supreme Court said:

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

[42] Stapled on the PAN dated October 6, 2016, BIR Records, p. 435.
[43] Pasted on the FAN dated October 6, 2016 (for income tax), BIR Records, p. 452.
[44] Refer to *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, supra.
[45] G.R. No. 240729, August 24, 2020.

whether the PAN and FAN were actually received by respondent.

xxx xxx xxx

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

Based on the foregoing jurisprudential pronouncements, the mere presentation of registry receipts is not sufficient. It is still required that the said registry receipts be signed by the concerned taxpayer's duly authorized representative, and that the signatures are identified and authenticated.

It is noteworthy that no signature whatsoever appears on the subject Registry Receipts. Thus, the fact of service to, or receipt of, petitioner of the subject PAN and FAN/FLD was never established by respondent.

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

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

Such being the case, respondent, not only failed to prove that petitioner actually received the said notices, he likewise neglected to show compliance with the requirements under the BIR's own rules and regulations.

Correspondingly, due process was not accorded to petitioner in the issuance of the subject PAN and FAN/FLD, pursuant to Section 228 of the NIRC of 1997, and Section 3.1 of RR No. 12-99, as amended by RR No. 18-2013, to wit:

Section 228, NIRC of 1997:

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

xxx xxx xxx

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx." *(Emphases added)*

Section 3.1, RR No. 12-99, as amended:

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

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

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

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

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

xxx xxx xxx

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

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

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

Since these due process requirements were not fulfilled, for failure of respondent to properly serve the PAN dated October 6, 2016 and FLD/FAN dated October 27, 2016, the subject tax assessments are null and void, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[46] to wit:

> "**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void</u>. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**" *(Emphases and underscoring added)*

In sum, considering that respondent was unable to present sufficient evidence that the subject PAN, and FAN/FLD were properly served and received by petitioner or by its authorized representative/s, there is no valid assessment to speak of in this

[46] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

case. *Apropos*, the failure of respondent to prove receipt of the assessment by petitioner would necessarily lead to the conclusion that no assessment was issued.[47]

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,[48] 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[47] *Commissioner of Internal Revenue vs. Bank of the Philippine Island*, G.R. No. 224327, June 11, 2018.

[48] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

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
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice