REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SVI INFORMATION SERVICES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8496

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated: FEB 10 2014
4:29 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a Petition for Review filed by SVI Information Services Corporation to appeal and question the Preliminary Collection Letter dated April 23, 2012 issued by the Commissioner of Internal Revenue, through Revenue District Office No. 43A, in the total amount of ₱14,513,761.44, inclusive of interest, representing alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) for taxable year 2007.

THE FACTS

SVI Information Services Corporation (petitioner) is a corporation organized and existing under the laws of the Philippines, with office address at the 6th Floor, JMT Building, 27 ADB Avenue, Ortigas Center, Pasig City.[1] Petitioner is principally engaged in the business of providing

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 100.

information and related services in the areas of information technology, finance, economics, investments, real estate and the like.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to exercise the functions of said office, including, *inter alia*, the power to abate or cancel tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner received Letter of Authority (LOA) No. 00008783[3] dated September 11, 2008 from the BIR, authorizing the examination of petitioner's books of accounts and other financial records for all internal revenue taxes for taxable year 2007.

On October 20, 2009, petitioner received a Post Reporting Notice from BIR Revenue District Office (RDO) No. 43A. Said notice, pursuant to the LOA, informed petitioner of the tentative findings for deficiency income tax, VAT, EWT, and withholding tax on compensation liabilities for taxable year 2007 and directed petitioner to attend an informal conference or to submit documentary evidence to refute said findings.[4]

On October 28, 2009, petitioner replied to the Post Reporting Notice through a letter dated October 26, 2009 addressed to Mr. Wilfredo M. Pantino, the Revenue Officer of BIR RDO No. 43A.[5]

Thereafter, on November 11, 2010, petitioner received from respondent Assessment Notices (FAN) and a Formal Letter of Demand with attached Details of Discrepancies dated October 18, 2010.[6] The Formal Letter of Demand is detailed as follows:

DEFICIENCY INCOME TAX		
Taxable Income per ITR		₱ -
Add: Adjustments per investigation:		
Income payments not subjected to withholding tax	₱18,637,024.40	
Unaccounted source of cash	790,682.22	
Non-deductible representation expense	589,022.81	20,016,729.43
Taxable Income per Investigation		20,016,729.43
Income Tax due thereon		7,005,855.30
Less: Allowable tax credits/payments		-

[2] Exhibit "A".
[3] Exhibit "G".
[4] Par. 4, Stipulation of Facts, JSFI, docket, p. 101; Exhibit "H".
[5] Exhibit "I".
[6] Exhibit "J".

Deficiency Income Tax		7,005,855.30
Add: 20% interest p.a. (04.16.08 to 11.18.10)		3,631,528.28
Total Amount Due		**₱10,637,383.58**

DEFICIENCY VALUE-ADDED TAX		
Taxable sales/receipts per VAT returns		₱ 93,925.58
Add: Adjustments per investigation	-	
Unaccounted source of cash	₱ 790,682.22	
Taxable sales/receipts not subject VAT	16,331,893.42	17,122,575.64
Taxable sales/receipts per investigation		17,216,501.22
Output tax due thereon		2,065,980.15
Less: Allowable tax credits/payments	-	
Input tax carried over from previous period	₱ 3,383,038.74	
Claimed input tax	355,383.66	
Total	₱ 3,738,422.40	
Less: Taxes carried over to next period	3,725,160.79	13,261.61
Deficiency VAT		2,052,718.54
Add: 20% interest p.a. (01.26.08 to 11.18.10)		1,155,146.27
Total Amount Due		**₱ 3,207,864.81**

DEFICIENCY EXPANDED WITHHOLDING TAX			
	AMOUNT	**EWT RATE**	**EWT DUE**
Income payments to subcontractors	₱16,925,401.50	2%	₱ 338,508.03
Rent, communication and utilities	1,667,646.00	5%	83,382.30
Management and professional services	43,976.90	10%	4,397.69
Deficiency Expanded Withholding Tax			426,288.02
Add: 20% interest p.a. (01.16.08 to 11.18.10)			242,225.03
Total Amount Due			**₱668,513.05**

Petitioner protested the FAN through a letter dated December 10, 2010, addressed to Ms. Lorna Tobias, Chief of the Assessment Division of BIR RDO No. 43A.[7]

Subsequently, petitioner received a Preliminary Collection Letter[8] on April 26, 2012, finding petitioner liable for deficiency taxes in the total amount of ₱14,513,761.44, inclusive of interest.

On May 24, 2012, petitioner received a Final Notice Before Seizure (Final Notice)[9] dated May 10, 2012 from BIR RDO No. 43A, reiterating the demand for payment of the alleged deficiency income tax, VAT and EWT for taxable year 2007. Hence, petitioner filed the instant Petition for Review[10] on May 25, 2012.

[7] Par. 10, Stipulation of Facts, JSFI, docket, p. 102; Exhibit "K".
[8] Exhibit "L".
[9] Exhibit "M".
[10] Docket, pp. 7-28.

In her Answer[11] filed on July 20, 2012, respondent interposed the following special and affirmative defenses:

> "4. The assessments for calendar year 2007 deficiency income tax, deficiency value added tax and deficiency expanded withholding tax were issued in accordance with applicable laws and regulations. The factual and legal bases of the assessments are contained in the Formal Letter of Demand (FLD) and Final Assessment Notices (FAN);
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> 5. As alleged by Petitioner in its Petition, it received the FAN and FLD on November 11, 2010 and filed its Letter of Protest dated December 10, 2010. However, Petitioner failed to submit the required documents within sixty (60) days from the filing of the letter of protest, hence, the assessments have already become final, executory and demandable. Consequently, this Honorable Court cannot anymore exercise jurisdiction over petitioner's Petition for Review.
>
> Section 3.1.5 of Revenue Regulations No. 12-99, specifically provides:
>
> ***'3.1.5 Disputed Assessment. The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protest against the validity of some of the issues raised, the taxpayer shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If***

[11] Docket, pp. 57-61.

> ***there are several issues involved in the disputed jurisprudence in support of his protest against some of the several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto. The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation. If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof, the assessment shall become final, executory and demandable. If the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from the date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner. If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from the date of submission, by the taxpayer, of the required documents in support of his protest,***

> ***the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, the assessment shall become final, executory and demandable.'***

6. The failure of the Petitioner to submit the required documents within sixty (60) days from the filing of the Letter of Protest which was filed on December 10, 2012, made the assessments final, executory and demandable. Hence, the right of the Petitioner to file this Petition for Review has already prescribed.

7. Assuming arguendo that the instant Petition was filed within the period provided by law, the details of discrepancies disclosed the following:

<u>Deficiency Income Tax</u>

a. Verification disclosed that you failed to fully subject the following income payments to expanded withholding tax as required by Revenue Regulations No. 2-98, as amended, thus, the difference was disallowed as deduction from your gross income pursuant to Section 34 (K) of the Tax Code of 1997, as amended.

b. Verification disclosed that the following accounts were not fully reported in the financial statements, as per analysis hereunder, wherein the total difference was considered as unaccounted source of cash which led to the inference that part of your income have not been declared as enunciated by the Court in the case of Perez vs. CTA & CIR L-10507 dated May 30, 1958. Therefore, the amount is added in your reported taxable income pursuant to Section 31 of the Tax Code of 1997, as amended.

c. Verification disclosed that your representation expense per financial statements (FS) has exceeded the statutory limit; therefore, the excess amount over the limitation, as computed hereunder, was assessed as non-deductible pursuant to Revenue Regulations No. 10-2002. *gr*

Deficiency Value Added Tax

a. Verification disclosed that the aforementioned unaccounted source of cash which was considered as undeclared income as discussed in item I.b of the Details of Discrepancies is subject to 12% VAT pursuant to Section 106 and 108 of the Tax Code of 1997, as amended.

b. Verification described that taxable sales/receipts per financial statements (FS) amounting to Php16,331,893.42 was not fully subjected to value-added tax therefore, assessed pursuant to Section 106 and 108 of the Tax Code of 1997, as amended.

Deficiency Expanded Withholding Tax

a. Verification disclosed that income payments were not fully subjected to expanded withholding tax, hence, assessed pursuant to the provision of the Revenue Regulations No. 2-98, as amended.

8. In ***COMMISSIONER OF INTERNAL REVENUE VS. BANK OF THE PHILIPINE ISLANDS, GR No. 134062*** dated April 17, 2007, the Honorable Supreme Court said, to wit:

> ***'Tax assessments by the 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 the tax assessments."***

On July 23, 2012, a Notice of Pre-Trial Conference was issued by this Court setting the case for pre-trial on August 23, 2012. Respondent filed her Respondent's Pre-Trial Brief[12] on August 10, 2012; while petitioner submitted its Pre-Trial Brief for Petitioner[13] on August 17, 2012. *gr*

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[12] Docket, pp. 66-70.
[13] Docket, pp. 71-86.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[14] on September 12, 2012. After finding everything in order, this Court issued a Pre-Trial Order[15] on September 25, 2012, declaring the pre-trial terminated and ordering petitioner to proceed with the initial presentation of its evidence.

On March 12, 2013, petitioner filed its Formal Offer of Evidence[16], offering Exhibits "A" to "Y-1", inclusive of sub-markings; which this Court admitted via Resolution[17] dated May 17, 2013, except for Exhibit "R" for petitioner's failure to identify the same and Exhibits "W" and "W-1" for petitioner's failure to submit the duly marked document.

On June 25, 2013, respondent filed her Formal Offer of Evidence[18], offering Exhibits "1" to "13-a", inclusive of sub-markings. In response, petitioner filed its Comment (on Respondent's Formal Offer of Evidence dated June 20, 2013) on July 12, 2013 opposing the admission of Exhibits "7" and "7-a" for allegedly not properly establishing the purpose for which said exhibits have been offered. In the July 31, 2013 Resolution[19], this Court admitted all exhibits formally offered by respondent.

The case was submitted for decision on September 4, 2013[20], after respondent submitted her Respondent's Memorandum[21] on August 14, 2013 and petitioner submitted its Memorandum[22] on September 2, 2013.

THE ISSUES

The issues[23] stipulated by the parties for this Court's resolution are as follows:

> "1. Whether or not the Honorable Court has jurisdiction to determine the validity of the Preliminary Collection Letter ('PCL') issued by respondent, through BIR RDO 43A of East Pasig City, dated April 23, 2012, for the aggregate amount of

[14] Docket, pp. 100-111.
[15] Docket, pp. 122-129.
[16] Docket, pp. 835-864.
[17] Docket, pp. 1241-1243.
[18] Docket, pp. 1268-1271.
[19] Docket, pp. 1290-1291.
[20] Docket, p. 1327.
[21] Docket, pp. 1292-1299.
[22] Docket, pp. 1300-1326.
[23] Stipulation of Issues, JSFI, docket, pp. 102-103.

₱14,513,761.44, inclusive of interest, representing alleged deficiency income tax, VAT and EWT for taxable year 2007.

2. Whether or not the FAN and the PCL are null and void since petitioner never received a Preliminary Assessment Notice from respondent.

3. Whether or not the period within which respondent may assess petitioner for deficiency internal revenue taxes for taxable year 2007 has already prescribed.

4. If the FAN and the PCL are valid and the right of the government to assess deficiency taxes has not yet prescribed, whether or not the assessment for deficiency income tax, VAT and expanded withholding tax for taxable year 2007 has factual and legal basis."

THE COURT'S RULING

Petitioner argues that this Court has jurisdiction over the instant case since its appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessment or refunds. It also covers other cases that arise out of the NIRC of 1997, as amended, or other related laws administered by the BIR. Furthermore, petitioner claims that respondent violated its right to due process by her failure to issue a PAN. It insists that it received only a Post Reporting Notice from respondent instead of a PAN, which is essentially a Notice of Informal Conference, consequently, rendering the corresponding FAN and PCL void.

On the other hand, respondent posits that this Court has no jurisdiction to decide on the validity of the issued PCL and the Final Notice Before Seizure because that would be tantamount to suspending the payment of tax. In addition, the issue in the instant case is not a tax collection initiated by respondent but rather a question on the validity of the issued PCL, thereby excluding the instant case from the coverage of this Court's jurisdiction. Respondent also insists that the PAN was sent to petitioner just as the FAN and the FLD. She even claims to have requested the Pasig City Post Office to issue a certification as to the whereabouts of the mailed documents, but the latter purportedly refused to issue said certification.

After a careful and thorough evaluation of the arguments raised by both parties, this Court finds the instant Petition for Review meritorious.

Under Section 7(a)(1) of Republic Act No. 1125[24], as amended, this Court is granted the exclusive appellate jurisdiction to review by appeal not only decisions of the BIR Commissioner but other matters arising under the NIRC as well, to wit:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*

The Supreme Court explained in the case of *Commissioner of Internal Revenue vs. Hambrecht and Quist Philippines, Inc.*[25] the meaning of the second part of the above-quoted provision in this wise:

> "Thus, on the strength of such observation, we have previously ruled that **the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds**. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).
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> xxx xxx xxx
>
> In connection therewith, Section 3[26] of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

[24] An Act Creating the Court of Tax Appeals, June 16, 1954.
[25] G.R. No. 169225, November 17, 2010, 635 SCRA 162.
[26] Now Section 2 of the NIRC of 1997, as amended.

> Sec. 3. Powers and duties of Bureau. - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied)
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> xxx xxx xxx

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. **The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.**

To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. **However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed.** This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide." *(Emphasis supplied)*

It has been held time and again that this Court may take cognizance of "other matters" which do not necessarily involve a disputed assessment. In the instant case, the issue of whether a PAN was indeed sent to petitioner to validate the issued FAN constitutes "other matters" arising under the NIRC and other laws administered by the BIR. This Court has promulgated more than enough cases in which this Court's jurisdiction over "other matters" arising under the NIRC or other tax laws administered by the BIR had been thoroughly discussed. Having that in mind, this Court upholds its jurisdiction over the instant case.

The Court now proceeds to determine whether respondent's assessment of petitioner's alleged deficiency income tax, VAT and EWT for taxable year 2007 is void.

Section 228 of the NIRC of 1997, as amended, in relation to Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013[27], provides for the right of the taxpayer to procedural due process in the issuance of assessment. Said Section requires that the BIR Commissioner, after finding that proper taxes should be assessed, must first issue a notice of her findings to the taxpayer in the nature of a PAN, to wit:

> "SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, **he shall first notify the taxpayer of his findings**: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

[27] Amending certain Sections of Revenue Regulations No. 12-99 relative to the due process requirement in the issuance of a deficiency tax assessment, dated November 28, 2013.

(d) When the excise tax due on exciseable 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.

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

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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

Section 3 of RR No. 12-99, as amended by RR No. 18-2013, provides:

"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: *gr*

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

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, a FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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

xxx xxx xxx

3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** - The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void." *(Emphasis supplied)*

Based on the afore-quoted provisions, save in cases where a prior notice of the assessment is not required, a PAN is a vital component or an indispensable requirement before the BIR Commissioner can issue a FAN/FLD. The use of the word "shall" is imperative, operating to impose a duty which should be enforced.[28] Even RR No. 18-2013 mandates that a PAN must be issued before the issuance of a FAN/FLD, which is the proper procedure in the issuance of a deficiency tax assessment.

The CTA *En Banc* in the case of *Commissioner of Internal Revenue vs. Laurence Lee V. Luang*[29] made the following explanations as regards the importance of the PAN to the validity of the assessment:

> "In the case of *Commissioner of Internal Revenue vs. Unioil Corporation*,[30] this Court sitting *En Banc* aptly penned as follows:
>
> This Court affirms the ruling of the CTA Third Division in the Assailed Decision and Assailed Resolution that petitioner failed to comply with the notice requirements mandated under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, thereby denying respondent of its right to due process, hence, effectively voiding the assessments issued.
>
> Section 228 of the 1997 National Internal Revenue Code clearly provides for the right of the taxpayer to procedural due process in the issuance of assessment. It is mandated that a taxpayer should be informed in writing of the law and the facts upon which the assessment against him is based, otherwise such assessment shall be invalid. Section 228 states thus:
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> xxx xxx xxx
>
> Such mandate is further reinforced by the provisions of Section 3 of Revenue Regulations No. 12-99 where the due process requirement in the issuance of deficiency tax assessments is defined as follows:
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> xxx xxx xxx

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[28] *Lorna Frances Filipino vs. F. Walter R. Macabuhay*, G.R. No. 158960, November 24, 2006, 508 SCRA 50.
[29] CTA EB No. 878 (CTA Case No. 7967), May 14, 2013.
[30] CTA EB No. 857 (CTA Case No. 8000), November 13, 2012.

The law and the regulations are clear on the requirements for procedural due process on the issuance of assessment for deficiency taxes. Full and complete compliance with these requirements is mandatory to ensure the validity of the assessment. Consequently, a void assessment bears no valid fruit.

The issuance of PAN is an integral part of procedural due process. The PAN lays down the factual and legal basis for the assessment. We reiterate the Assailed Decision's discussion on the indispensable nature of the PAN in the issuance of assessments and give emphasis to the fact that the 1997 NIRC provided that the issuance of PAN in assessments is mandatory in tax assessments except in a few instances, specifically enumerated by law, where it is not required.

The Supreme Court, in the recent case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* ruled that PAN is a vital component of procedural process in the issuance of tax assessments, to wit:

xxx xxx xxx

In the present petition, respondent denies the receipt of the PAN in relation to the deficiency tax assessments issued against it by the petitioner. Petitioner on the other hand alleges that petitioner actually received the PAN considering that it was able to file its protest to the PAN. We agree with respondent.

As respondent categorically denies the receipt of the PAN, it is incumbent upon petitioner to prove the contrary. In the case of *Republic of the Philippines vs. The Court of Appeals, and Nielson & Company, Inc.*, the Supreme Court held that:

xxx xxx xxx

Hence, as **petitioner failed to prove the receipt of the PAN by the respondent, thereby effectively denying the latter of its right to due process**, We affirm the CTA

> Third Division's ruling cancelling and setting aside the subject assessments for deficiency withholding taxes and deficiency expanded withholding taxes for the taxable year 2005. xxx" *(Emphasis supplied)*

Well-settled is the rule that when the taxpayer denies receiving an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* is therefore shifted to the BIR to prove by contrary evidence that the taxpayer received the assessment notice in the due course of mail.[31] In other words, while there is a disputable presumption that a mailed letter is deemed received by the addressee in the ordinary course of mail,[32] a direct denial of the receipt of mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In the instant case, respondent failed to prove that the PAN was delivered to petitioner. Records show that respondent did not formally offer as her evidence any document, such as a copy of a registry return receipt in case of service through registered mail or the alleged request for certification addressed to the Pasig City Post Office, which will prove that petitioner did in fact receive the disputed PAN. Respondent also failed to convince this Court that the PAN was personally received by petitioner. Accordingly, in the absence of proof of actual receipt by petitioner of a PAN in violation of Section 228 of the NIRC of 1997 and RR No. 12-99, as amended by RR No. 18-2013, this Court finds that petitioner was not accorded procedural due process in the issuance of the assessment.

In view of the foregoing conclusion, the Court reckons it unnecessary to address the other issues raised by the parties.

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[31] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, 498 SCRA 126.

[32] SEC. 3. *Disputable presumptions.* - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx
(v) That a letter duly directed and mailed was received in the regular course of the mail; (Section 3 of Rule 131 of the Rules of Court).

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Preliminary Collection Letter dated April 23, 2012 is hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 opinión of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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