REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MA. ERLINDA T. ONG, doing business under the name and style, 'Maranatha Sales Distributor, duly represented herein by her Attorney-in Fact, Ms. Ria A. Sablon, Petitioner,	**CTA CASE NO. 10444**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE (CIR), BUREAU OF INTERNAL REVENUE (BIR), Respondents.	Promulgated: JUN 13 2024 4:05 pm

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DECISION

FERRER-FLORES, J.:

THE CASE

The *Petition for Review*, filed on January 6, 2021, prays that the *Decision* dated May 29, 2020, issued by the respondent **Commissioner of Internal Revenue** (CIR) against petitioner **Ma. Erlinda T. Ong**, for its alleged deficiency taxes in the aggregate amount of **₱9,766,591.49** be reversed.[1]

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[1] Summary of the Case, Pre-Trial Order dated January 12, 2022, Docket – Vol. I, p. 433.

THE PARTIES

Petitioner owns the Maranatha Sales Distributor, a sole proprietorship business duly organized and existing under Philippine laws, with business address at Sol's Subdivision, Bitano, Legazpi City, Province of Albay.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as related statutes and their implementing rules and regulations. He holds office at BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

In the *Letter of Authority* (LOA) (SN: eLA201000022614) dated March 5, 2015,[4] Regional Director Esmeralda M. Tabule authorized Revenue Officer (RO) Randy Socito and Group Supervisor (GS) Domingo Aguinaldo of Revenue District Office (RDO) No. 067 – Legazpi City, Albay, to examine the books of accounts and other accounting records of petitioner and her spouse, Mr. Pik Sun Sy Ong, for all internal revenue taxes, for the period January 1, 2012 to December 31, 2012.

Thereafter, requests for the presentation of records were issued by the BIR against the spouses, *viz*: (1) *First Request for Presentation of Records* dated March 11, 2015;[5] (2) *Second Request for Presentation of Records* dated March 30, 2015;[6] and, *Final Request for Presentation of Records* dated April 17, 2015.[7]

There being no response from petitioner,[8] the *Subpoena Duces Tecum* No. RR10-2015-22 was subsequently issued by respondent on October 13, 2015,[9] to which petitioner replied through the letter dated October 27, 2015.[10]

Respondent then issued the *Preliminary Assessment Notice* (PAN) dated December 7, 2015.[11]

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2 Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 424.
3 Par. 2, *Id.*
4 Exhibit "R-1", BIR Records (Exhibit "R-16"), p. 17.
5 Exhibit "R-2", *Id.* at 18.
6 Exhibit "R-3", *Id.* at 20.
7 Exhibit "R-4", *Id.* at 22.
8 Refer to Exhibit "R-5", *Id.* at 24.
9 Exhibit "R-6, *Id.* at 30.
10 Exhibit "R-7", *Id.* at 42 to 50.
11 Exhibit "R-9", BIR Records (Exhibit "R-16"), pp. 203 to 204.

Subsequently, the BIR issued the *Formal Letter of Demand* (FLD) with *Details of Discrepancies*, and *Assessment Notice* OCN Nos. 10-067-IT-2012-000524-2015, 10-067-PT-2012-000525-2015, 10-067-VT-2012-000526-2015, 10-067-WE-2012-000527-2015, 10-067-WC-2012-000528-2015 and 10-067-MC-2012-000529-2015, all dated December 29, 2015,[12] assessing petitioner and her spouse for deficiency income tax, percentage tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC) and compromise penalty, for taxable year (TY) 2012, in the aggregate amount of ₱9,766,591.49, inclusive of surcharges and interests. Petitioner then filed its protest (via *Request for Reconsideration*) to the said FLD/*Assessment Notices* on February 2, 2016.[13]

Petitioner then received an undated letter from the BIR,[14] stating that the uncontested portion of the assessment (*i.e.*, compromise penalty amounting to ₱54,000.00) should first be paid before they could act on the protest. This was followed by the BIR's issuance of the *Collection Letter* dated March 21, 2016 covering the said amount of ₱54,000.00.[15] Petitioner opposed the same through the letter dated March 28, 2016.[16]

Another undated letter from the BIR was then received by petitioner,[17] informing her that her case has already been transmitted to RDO No. 067, Legazpi City, for the collection enforcement of the undisputed compromise penalty, and the appropriate action on its protest letters.

On July 19, 2018, the BIR issued a *Preliminary Collection Letter* (PCL),[18] requesting for the payment of the tax liabilities of Mr. Pik Sun Sy Ong in the total amount of ₱147,587,70, and of petitioner in the aggregate amount of ₱9,619,003.79.

Thereafter, respondent issued its *Final Notice Before Seizure* (FNBS) dated August 7, 2018, which was received by petitioner on August 15, 2018.[19]

Petitioner and her still living-at-the-time spouse, Mr. Pik Sun Ong, filed on August 23, 2018, with the office of respondent and the Appellate

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[12] Exhibits "R-10", "R-11", "R-11-B', "R-11-C", "R-11-D", and "R-11-E", *Id.* at 210 to 212, 214, 216, 217, 218, and 219, respectively.
[13] *Id.* at 241 to 247.
[14] Exhibit "P-13", Docket – Vol. II, p. 650.
[15] BIR Records (Exhibit "R-16"), p. 250.
[16] *Id.* at 251.
[17] *Id.* at 254.
[18] Exhibit "R-13", *Id.* at 262.
[19] Exhibit "R-14", *Id.* at 263.

Division of the BIR National Office (addressed to Appellate Division's Chief, Atty. Hayle F. Bonilla), a *"Request for an Administrative Intervention"* dated August 20, 2018, seeking to halt impending collection efforts initiated by Revenue Region No. 10, through its Collection Division's Assistant Chief, Ms. Jocelyn A. Aringo.[20]

Revenue Region No. 10 issued the *Warrant of Distraint and/or Levy* (WDL) dated March 13, 2019, directing BIR's Seizure Agent, Ms. Ela Marie B. Rebustillo, to essentially seize the Ong couple's personal property, and levy on their real property to satisfy their alleged tax deficiency.[21] This prompted petitioner to file another letter on March 18, 2019,[22] addressed to then Commissioner Caesar R. Dulay, Chief of Appellate Division Hayle F. Bonilla, and Regional Director (RD) Gerry O. Dumayas of Revenue Region No. 10, entitled *"Final Exhaustion of Administrative Assistance and Request for Immediate Lifting of Illegally Issued Warrant of Distraint and/or Levy... Prior to Filing Formal Administrative Complaint to the Office of the Ombudsman and/or Other Quasi-Judicial Bodies"*.

On March 29, 2019, Mr. Pik Sun Ong passed on.[23]

The *Final Notice Before Filing Administrative Complaint* (*Final Notice*) dated April 25, 2019 was filed by petitioner before the Office of RD Dumayas on May 9, 2019.[24]

Replying to petitioner's *Final Notice*, in the letter dated May 10, 2019,[25] RD Dumayas clarified the issues raised by petitioner on the validity of the assessment and the issuance of the WDL. He explained that no court, except this Court, has the power to grant injunction to restrain the collection of any internal revenue tax, fee or charge imposed by the Tax Code.

On May 29, 2020, respondent promulgated the assailed *Decision* on the administrative appeal of petitioner against the collection proceedings relative to the latter's deficiency tax assessments in the total amount of ₱9,766,591.49. The dispositive portion thereof is quoted as follows:

> WHEREFORE, predicated on all the foregoing, MA. ERLINDA T. ONG and PIK SUN ONG's administrative appeal is hereby DENIED and the assessment demanding payment in the total amount of Php9,766,591.49 representing deficiency Income Tax, Percentage Tax,

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[20] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 425.
[21] Par. 4, *Id.*; Exhibit "R-15", BIR Records (Exhibit "R-16"), p. 381.
[22] BIR Records (Exhibit "R-16"), pp. 764 to 776.
[23] Exhibit "P-24", Docket – Vol. II, pp. 737 to 738.
[24] BIR Records (Exhibit "R-16"), pp. 428 to 433.
[25] *Id.* at 447 to 449.

> Value-Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation, inclusive of Compromise Penalties, for the taxable year 2012 is hereby affirmed in all respects.
>
> Consequently, MA. ERLINDA T. ONG and PIK Sun Ong are hereby ordered to pay the aforestated amount, plus increments that have accrued thereon until the actual date of payment, to the Collection Service, BIR National Office, Diliman, Quezon City, otherwise, collection thereof will be effected through the summary remedies provided by law.
>
> This constitutes the Final Decision of this Office on the matter.[26]

The said *Decision* was received by petitioner on December 7, 2020.[27]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on January 6, 2021.[28] The case was initially raffled to the Second Division of this Court.

Respondent filed his *Answer* on March 15, 2021.[29]

Respondent's Pre-Trial Brief was posted on April 30, 2021,[30] while petitioner's *Pre-Trial Brief* was filed on June 11, 2021.[31]

The case was initially set for Pre-Trial Conference on May 3, 2021,[32] and was reset to June 14, 2021.[33]

In the meantime, on May 21, 2021, respondent transmitted, the entire *BIR Records* of this case, consisting of 951 pages, contained in three (3) folders.[34]

At the hearing held on June 14, 2021, the Court directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals

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26 Par. 17.18, *Answer*, Docket – Vol. I, p. 173; Par. 1.18, Discussions and Arguments, respondent's *Memorandum*, Docket – Vol. II, pp. 1010 to 1011.

27 Timeliness of the Petition, *Petition for Review*, Docket – Vol. I, p. 8, vis-à-vis *Affidavit of Service*, BIR Records (Exhibit "R-16-B"), pp. 938 to 941.

28 Docket – Vol. I, pp. 6 to 29. Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 425.

29 *Id.* at 166 to 185.

30 *Id.* at 231 to 236.

31 *Id.* at 240 to 244.

32 Notice of Pre-Trial Conference dated March 17, 2021, Docket – Vol. I, pp. 187 to 188.

33 Order dated May 25, 2021, Docket – Vol. I, p. 239.

34 Respondent's *Transmittal* dated May 19, 2021, Docket – Vol. I, pp. 227 to 229.

(PMC-CTA) for mediation proceedings pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.[35]

On July 21, 2021, the PMC-CTA filed the *No Agreement to Mediate*,[36] stating that the parties decided not to have their case mediated. The Court then set the case anew for Pre-Trial Conference on September 22, 2021.[37] However, the said Conference was again moved to,[38] and held on, November 10, 2021.[39]

On December 10, 2021, the parties filed their *Joint Stipulation of Facts and Issues*,[40] which was approved and adopted in the Pre-Trial Order dated January 12, 2022,[41] deeming the termination of the Pre-Trial.

In the trial that ensued, both parties presented their respective testimonial and documentary evidence. Petitioner offered the testimony of her authorized representative and attorney-in-fact, Ms. Ria A. Sablon.[42]

On April 18, 2022, petitioner filed her *Formal Offer of Evidence (With Manifestation)*,[43] to which respondent filed his *Comment (Re: Formal Offer of Evidence dated 14 April 2022)* on April 20, 2022.[44] In the Resolution dated May 19, 2022,[45] the Court admitted her offered exhibits, *except* for Exhibits "P-22", "P-24" and "P-29", for failure to submit the originals for comparison.

Subsequently, in view of the reorganization of the Second and Third Divisions of this Court, the present case was transferred to the Third Division.[46]

For his part, respondent offered the testimonies of his witnesses, namely: (1) RO Randy P. Socito;[47] (2) Ms. Imelda L. Moroña,[48] OIC-Chief

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35 Minutes of the hearing held on, and Order dated, June 14, 2021, Docket – Vol. I, pp. 246 to 247; Resolution dated June 17, 2021, Docket – Vol. I, p. 249.
36 Docket – Vol. I, p. 250.
37 Resolution dated July 27, 2021, Docket – Vol. I, p. 421.
38 Notice of Resetting dated October 13, 2021, Docket – Vol. I, p. 422.
39 Order dated November 10, 2021, Docket – Vol. I, p. 423.
40 Docket – Vol. I, pp. 424 to 431.
41 *Id.* at 433 to 438.
42 Exhibit "P-30", Docket – Vol. I, pp. 251 to 267; Minutes of the hearing held on, and Order dated, March 30, 2022, Docket – Vol. I, p. 440, and Docket – Vol. II, p. 949, respectively.
43 Docket – Vol. II, pp. 442 to 451.
44 Docket – Vol. II, pp. 950 to 952.
45 *Id.* at 959 to 961.
46 Order dated June 29, 2022, *Id.* at 962.
47 Exhibit "R-17", Docket – Vol. I, pp. 199 to 209; Minutes of the hearing held on, and Order dated, November 3, 2022, Docket – Vol. II, pp. 969, and 972 to 973, respectively.

of Assessment Division - BIR Revenue Region No. 10; and (3) RO Ela Marie B. Rebustillo,[49] Seizure Agent of Collection Division – BIR Revenue Region No. 10.

Respondent's *Formal Offer of Evidence* was filed on November 28, 2022.[50] Petitioner filed her *Comment/Objections to Respondent's Formal Offer of Evidence* on December 9, 2022.[51] In the Resolution dated February 8, 2023,[52] the Court admitted all of respondent's exhibits.

Respondent's *Memorandum* was filed on March 3, 2023;[53] while the *Memorandum for Petitioner* was submitted on March 27, 2023.[54]

On May 30, 2023, the present case was re-raffled back to this Court's Second Division, pursuant to Administrative Circular No. 02-2023 dated May 23, 2023.[55]

Subsequently, the present case was considered submitted for decision on June 19, 2023.[56]

THE STIPULATED ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:

I. Whether or not petitioner's right to due process was breached or violated by the Respondent;

II. Whether or not the right of the government to collect Petitioner's supposed deficiency taxes has already prescribed;

III. Whether or not the Honorable Court of Tax Appeals has jurisdiction over the instant case; and,

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48 Exhibit "R-18", Docket – Vol. I, pp. 211 to 216; Minutes of the hearing held on, and Order dated, November 3, 2022, Docket – Vol. II, pp. 969, and 972 to 973, respectively.
49 Exhibit "R-20", Docket – Vol. I, pp. 221 to 226; Minutes of the hearing held on, and Order dated, November 3, 2022, Docket – Vol. II, pp. 969, and 972 to 973, respectively.
50 Docket – Vol. II, pp. 974 to 984.
51 *Id.* at 987 to 994.
52 *Id.* at 999 to 1000.
53 *Id.* at 1003 to 1022.
54 *Id.* at 1027 to 1031.
55 Notice dated May 30, 2023, Docket – Vol. II.
56 Resolution dated June 19, 2023, Docket – Vol. II, p. 1033.

IV. Whether or not petitioner is liable for deficiency Income Tax, Percentage Tax, VAT, EWT, WTC and Compromise Penalty in the total amount of Php9,766,591.49 for the taxable year 2012.[57]

Petitioner's arguments:

Firstly, anent the issue of violation of due process, petitioner contends that the utter lack or failure to serve the PAN renders all of respondent's subsequent correspondence or issuances void. Petitioner stresses that valid service of the PAN is mandatory; otherwise, the assessment is deemed void for failure to observe due process.

Citing as support to its petitioner a number of jurisprudence on the matter, petitioner insists that the lack of PAN is fatal to the BIR's cause as the same is an integral part of due process based on Revenue Regulations (RR) No. 12-99. Petitioner explains that if a taxpayer denies receipt of the PAN it behooves upon the BIR to prove receipt of the same otherwise the assessment will be set aside. According to petitioner, respondent did not even bother to present any witness who could have attested to the successful delivery of the PAN. Thus, the tax deficiency assessment issued against her must utterly fail due to respondent's blatant deprivation of her right to due process.

On another procedural issue, petitioner alleges that there was also a defect on the service of the *Final Assessment Notice* (FAN) and FLD, since respondent resorted to registered mail for the service of the same without any explanation on the impossibility of personal service as a mode of service, as required in 3.1.6 of RR No. 18-2013. Additionally, petitioner posits that respondent also failed to render or promulgate a *Final Decision on Disputed Assessment* (FDDA). Petitioner also alleges that respondent's LOA failed to mention the set of criteria or standards for placing her under audit for a second consecutive year as prescribed in Revenue Memorandum Order (RMO) Nos. 67-99, 13-2002 and 44-2010.

Secondly, on the issue of prescription, petitioner claims that the cause of action against her has prescribed – on April 15, 2016 for the period to assess taxes for taxable year 2012 and on April 15, 2018 for the period to collect the same. She explains that Revenue Region No. 10 failed to render a final decision on her protest against the FLD/FAN while respondent only came out with a decision on May 29, 2020. Allegedly, petitioner has not requested for reinvestigation nor signed a waiver to extend the above periods,

[57] Issues to be Tried and Resolved, JSFI, Docket – Vol. I, p. 425.

of prescription pursuant to Sec. 203 of the NIRC of 1997, as amended, in relation to Section 58(A) of the same Code, and RR No. 17-2003 as well as Section 114(a) of the NIRC of 1997, as amended.

Thirdly, as to the issue on jurisdiction, petitioner argues that the Court has indisputable jurisdiction over the instant *Petition* for being seasonably filed on January 6, 2021 or within thirty (30) days from receipt of respondent's assailed *Decision* on December 7, 2020.

And in conclusion, petitioner asserts that the subject assessment for deficiency income tax, percentage tax, VAT, EWT, WTC, and compromise penalties, should be cancelled for lack of factual and legal basis.

Respondent's counter-arguments:

Respondent, on the other hand, reiterates the arguments in his *Answer*. He stresses therein that this Court does not have jurisdiction over the present case for failure of petitioner to file a *Petition for Review* within thirty (30) days from receipt of the PCL, which is equivalent to an FDDA, on July 20, 2018, or from the receipt of the WDL on March 13, 2019, pursuant to Section 228 of the NIRC of 1997, as amended, in relation to RR No. 18-2013. Without admitting the Court's jurisdiction, respondent posits that petitioner was not deprived of her right to due process since petitioner was given ample opportunity to contest the assessments as shown by their correspondence as well as petitioner's protests to respondent's relevant issuances. Moreover, respondent claims that petitioner is liable for deficiency income tax, percentage tax, VAT, EWT, WTC and compromise penalties. Finally, respondent contends that his right to assess and/or collect taxes from petitioner did not prescribe on the ground that the present case falls under Section 222 of the NIRC of 1997, as amended; thus, the PCL dated July 26, 2018, FNBS dated August 7, 2018 and WDL dated March 13, 2019 were all issued within five (5) years from receipt by the petitioner of such issuances.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

The Court has jurisdiction to entertain the present case.

Indeed, jurisdiction is defined as the power and authority of a Court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is **conferred by law** and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[58]

This Court, being a court of special jurisdiction, has the judicial power to review the decisions of respondent.[59] Relative thereto, Sections 7(a)(1) and 11 of Republic Act (R.A.) No. 1125,[60] as amended by R.A. No. 9282,[61] provides as follows:

> SEC. 7. ***Jurisdiction.* – The CTA shall exercise**:
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> **(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases added)*
>
> "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 xxx 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 actions as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. **A Division of the CTA shall hear the appeal**: xxx.
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> xxx xxx xxx. *(Emphasis added)*

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58 *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

59 *Harte-Hanks Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205721, September 14, 2016.

60 AN ACT CREATING THE COURT OF TAX APPEALS.

61 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.

Based on the foregoing provisions, the exclusive appellate jurisdiction of this Court in Division is not limited to cases involving decisions of the respondent on matters relating to assessments or refunds.[62] In other words, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. **The second part of the provision covers the cases that arise out of the NIRC or related laws administered by the BIR.**[63] The wording of the provision is clear and simple.[64]

Moreover, the appeal period is thirty (30) days from receipt of respondent's decision. In any event, it must be stated that the said thirty (30)-day period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[65]

In this case, while it may be true that the assailed *Decision* is not an administrative appeal from an FDDA, the same is still cognizable by this Court, since it involves a matter which arose out of the NIRC of 1997, as amended. It must be noted that the issue resolved in the assailed *Decision* sprung from petitioner's initiative to put to a halt the tax collection efforts being exerted by the BIR's Revenue Region No. 10. Thus, what is basically being assailed therein is the power and duty of the BIR, to which respondent is the chief,[66] to collect national internal revenue taxes, which are recognized under Sections 2[67] and 205[68] of the NIRC of 1997, as amended.

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[62] *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division, et al.*, G.R. No. 258947, March 29, 2022.

[63] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[64] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[65] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[66] Section 3 of the NIRC of 1997 reads:
SEC. 3. *Chief Officials of the Bureau of Internal Revenue.* – **The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue**, hereinafter referred to as the Commissioner, and four (4) assistant chiefs to be known as Deputy Commissioners. *(Emphasis added)*

[67] Section 2 of the NIRC of 1997 states:
SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* – **The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and <u>its powers and duties shall comprehend the</u>** assessment and **<u>collection of all national internal revenue taxes</u>**, 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. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. *(Emphasis and underscoring added)*

[68] Section 205 of the NIRC of 1997 reads:
SEC. 205. *Remedies for the Collection of Delinquent Taxes.* – The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

(a) By distrain of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) By civil or criminal action.

Considering that the assailed *Decision* was received by petitioner on December 7, 2020,[69] the latter had thirty (30) days therefrom, or until January 6, 2021, within which to file her *Petition for Review*. Since the present *Petition for Review* was filed on January 6, 2021,[70] this Court has jurisdiction to entertain the same.

The subject tax assessments are void for violation of petitioner's right to due process.

At this juncture, it must be emphasized that tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence.[71]

Section 3 of RR No. 12-99[72], as amended by RR No. 18-2013[73], provides the due process requirements in the issuance and service of deficiency tax assessments, *viz.*:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 ***Preliminary Assessment Notice*** **(PAN)** – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.
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> xxx xxx xxx

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, That the remedies of distrain and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

xxx xxx xxx.

69 Timeliness of the Petition, *Petition for Review*, Docket – Vol. I, p. 8, vis-à-vis *Affidavit of Service*, BIR Records (Exhibit "R-16-B"), pp. 938 to 941.

70 Docket – Vol. I, pp. 6 to 29. Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 425.

71 *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

72 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

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

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

xxx xxx xxx

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

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

It is elementary that a taxpayer must actually receive any assessment issued by respondent in order for the same to be valid.[74] The Supreme Court, in *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.,*[75] declared that, in view of T Shuttle Services, Inc.'s categorical denial of due receipt of the PAN and the FAN, the burden was shifted to respondent to prove that the mailed assessment notices were indeed received by the said taxpayer or by its authorized representative.

Similarly, petitioner herein has unequivocally denied receipt of the PAN as shown in the Judicial Affidavit of petitioner's witness, Ms. Ria A. Sablon,[76] as follows:

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[74] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; and *Barcelon Roxas Securities, Inc. vs Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

[75] Resolution, G.R. No. 240729, August 24, 2020.

[76] Docket – Vol. I, p. 257.

27. Q: What was your reaction when you received the FAN and FLD?

A: Petitioner and I were shocked because those were what we received and yet petitioner or I did not even receive a Preliminary Assessment Notice (PAN) at all from Revenue Region No. 10.

28. Q: You said you or petitioner did not receive a PAN from Revenue Region No. 10. Just to clarify: no PAN was served on petitioner or you whether by personal service or registered mail.

A: We were never furnished with a PAN at all which is why it was truly surprising that instead of a PAN, what was transmitted was the FAN and FLD.

On the part of respondent, RO Socito, during the hearing held on November 3, 2022, was cross-examined as regards his participation was only up to the preparation of the memorandum recommending the issuance of the PAN but took no part in the service of the same to the taxpayer.[77]

According to him, the PAN dated December 7, 2015 was issued by OIC-Chief Imelda L. Moroña on December 18, 2015 and was forwarded to the Administrative and Human Resource Division of Revenue Region 10, *viz*:[78]

Q: Do you have personal knowledge if the PAN was served on petitioner and her spouse?

A: The date of preliminary assessment notice was December 7 of 2015, however, it was issued December 18 of 2015 through mail and it was forwarded to the Administrative and Human Resource of the Revenue Region X.

Q: So, that is the only extent of your knowledge with respect to the PAN?

A: Yes.

Q: You do not know whether it was duly served?

A: No.

Although respondent never wavered in their assertion that they issued a PAN, respondent's witnesses alleges that they do not know who served the PAN, and if the same was, in fact, duly served.

[77] Transcript of Stenographic Notes (TSN) dated November 3, 2022, p. 15.
[78] *Id.* at p. 23.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[79] the Supreme Court held that while a mailed letter is deemed received by the addressee in the course of the mail, there is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was actually received by the addressee.

As duly examined by this Court, other than OIC-Chief Moroña's self-serving statement that the PAN, together with the *Details of Discrepancies*, was issued and served to petitioner and her spouse Mr. Pik Sun Ong,[80] there is no *prima facie* evidence, much less any sort of evidence, that was presented to prove such claim. Thus, respondent's negligence in their duty to properly assess taxes is palpable in this case. For this reason, the conclusion can be made that no valid assessment was issued by respondent as petitioner did not receive the PAN. Consequently, the tax assessments against petitioner, and the subsequent collection thereof, were made in violation of her right to administrative due process.

It bears stressing that the PAN is part and parcel of the due process requirements in tax assessment proceedings. It gives the taxpayer an opportunity to contest a pre-assessment notice before the BIR issues a final assessment. In fact, the Supreme Court, in *Commissioner of Internal Revenue vs. Metro Star Superama Inc.*,[81] stressed the importance of the PAN, in particular, as a substantive, and not just a formal, due process requirement, thus:

> Indeed, Section 228 of the Tax Cod clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. 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.
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> xxx xxx xxx
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> **From the provision quoted above, it is clear that the sending of a PAN to a taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment', the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN.** The

[79] G.R. No. 202695, February 29, 2016.
[80] Q/A No. 12, Judicial Affidavit of OIC-Chief of Imelda L. Moroña, Docket – Vol. I, p. 213.
[81] G.R. No. 185371, December 8, 2010.

> persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to comply with the requirements laid by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.
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> xxx xxx xxx
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> That respondent was able to file a protest to the FLD/FAN is of no moment. **In Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, the BIR ignored RR No. 12-99 and did not issue to the taxpayer, Pilipinas Shell Petroleum Corporation (PSPC), a notice for informal conference and a PAN as required; and as a result, deprived PSPC of due process in contesting the formal assessment levied against it. The Court pronounced therein that 'while PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued'.** The Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of taxpayer. *(Emphases added)*

Based on the foregoing jurisprudential pronouncements, it is axiomatic that proper service of the assessment notice is an integral part of due process. Thus, the failure of respondent to validly serve the PAN to petitioner is an outright deprivation of the latter's opportunity to explain her side. Accordingly, it renders the subject tax assessments as null and void.

The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the overriding concern of government agencies.[82] While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.[83]

All told, there being a violation of administrative due process in this case since there is no indication that the subject PAN was served to petitioner, the cancellation of the deficiency tax assessments against her and Mr. Pik Sun Ong, for taxable year 2012 is in order. Accordingly, the subject PCL, FNBS, and WDL, cannot be said to have been yielded from valid assessments, and thus, cannot be deemed as valid collection instruments of

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[82] *Mabuhay Textile Mills Corp. vs. Ongpin*, G.R. No. L-67784, February 28, 1986.
[83] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

the subject deficiency tax assessments. To be sure, an invalid assessment bears no valid fruit.[84]

In view of the foregoing findings, this Court hereby rules that it is no longer necessary to address the other issues and arguments raised by the parties herein.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the assailed *Decision* dated May 29, 2020 of respondent is **REVERSED** and **SET ASIDE**. Moreover, the Formal Letter of Demand with *Details of Discrepancies*, and *Assessment Notices* dated December 29, 2015, assessing petitioner the aggregate amount of ₱9,766,591.49, inclusive of increments, representing the alleged deficiency income tax, percentage tax, value-added tax, expanded withholding tax, withholding tax on compensation, and compromise penalty, for taxable year 2012, as well as the Preliminary Collection Letter dated July 19, 2018, the Final Notice Before Seizure dated August 7, 2018, and the Warrant of Distraint and/or Levy dated March 13, 2019, are all **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
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