REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DAEWOO ENGINEERING & CONSTRUCTION COMPANY LIMITED,	**CTA Case No. 8829**
Petitioner,	Members:
-versus-	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	NOV 17 2017 4:30 p.m.

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D E C I S I O N

MANAHAN, *J.:*

This involves a Petition for Review filed on 04 June 2014 by Daewoo Engineering & Construction Company Limited, as petitioner, against the Commissioner of Internal Revenue, as respondent, before the Court in Division.

Petitioner seeks the cancellation and withdrawal of the deficiency value-added tax (VAT) assessment issued against it for taxable year 2007 in the total amount of Php21,531,938.39, inclusive of interest.

THE PARTIES

Petitioner is a foreign corporation organized and existing under the laws of Korea and duly registered with the Philippine Securities and Exchange Commission under Amended SEC License No. AFO96-070 dated March 15, 2001.[1]

[1] BIR Records, p. 162; Annex "A" of the Petition, Docket, Volume I, p. 35.

It holds office at Unit 2506 Prestige Tower, Ortigas Center, Pasig City.[2] It is duly licensed by the Philippine Contractors Accreditation Board (PCAB) and was part of the construction, among others, of the Agno River Flood Control Project in partnership with the Department of Public Works and Highways. [3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested with the powers and duties, among others, to assess and collect all national internal revenue taxes and to decide, approve and grant tax protests. He holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS

As stated in the Joint Stipulation of Facts and Issues (JSFI)[4] filed with this Court on May 15, 2015, the factual antecedents are as follows:

> "5. On September 25, 2009, petitioner received Letter Notice No. 047-TRS-07-00-00019 dated September 3, 2009 signed by the CIR.
>
> 6. On October 19, 2009, petitioner received a Follow-Up Letter dated October 15, 2009 signed by Ms. Amelita A. Escober, Head of the Letter Notice (LN) Task Force for Revenue Region Nos. 7 and 8.
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> 7. On June 10, 2010, petitioner received Letter of Authority No. 2009-00016963 dated May 11, 2010 through which Revenue Officer (RO) Mario H. Eleda and Ms. Amelita A. Escober were authorized to examine petitioner's books of accounts pertaining to the tax audit for CY2007 under LN No. 047-TRS-07-00-00019."

Records also show that a Preliminary Assessment Notice (PAN) was issued by the respondent, thru Deputy Commissioner Nelson M. Aspe with attached "Details of Discrepancies." [5]

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[2] Joint Stipulation of Facts and Issues (JSFI), Docket, Volume II, pp. 481- 493.
[3] Exhibit "P-9-1", Docket, Volume II, pp. 544-567.
[4] JSFI, Docket, Volume II, pp. 481-493.
[5] Exhibit "R-4", BIR Records, pp. 92-93.

On February 21, 2011, respondent thru Deputy Commissioner Nelson M. Aspe, issued a Final Assessment Notice (FAN)[6] with attached "Details of Discrepancies" attached as Annex "A" for deficiency VAT for taxable year 2007.

Thereafter, a Preliminary Collection Letter (PCL) dated April 24, 2013 was issued by the Chief of the Collection Division of Revenue Region No. 7, Ms. Ruth Vivian G. Gadia, requesting petitioner to pay its VAT deficiencies for taxable year 2007 in the total amount of Php21,531,938.39 inclusive of increments.[7] The PCL contained a note from Ms. Gadia that their office will be constrained to enforce collection through administrative summary remedies if taxpayer fails to pay the aforesaid taxes within the time prescribed for payment. The PCL was received by the petitioner on May 30, 2013.[8]

On April 24, 2013, a Final Notice of Seizure was issued by the BIR and signed by Ms. Gadia reiterating her office's request for payment of the aforementioned amount within ten (10) days from receipt of the notice.[9] Subsequently, Ms. Gadia in her capacity as Chief of the Collection Division of Revenue Region No. 7 issued warrants of garnishment on several bank accounts belonging to the petitioner.[10]

In a letter dated March 24, 2014, the Assistant Vice-President of the Legal Services Group of Banco de Oro (BDO) wrote petitioner informing them that BDO was holding the latter's bank account at the SM Megamall branch until further instructions pursuant to the Warrant of Garnishment issued by respondent. [11]

On May 5, 2014 and received by the respondent on even date, petitioner, through its Branch Manager wrote a letter to the Chief of the Collection Division of Revenue Region No. 7 to request for certified true copies of both the Assessment Notices supposedly issued against the petitioner and Warrant of Garnishment addressed to BDO.[12]

[6] Exhibit "R-5", BIR Records, pp. 94-96.
[7] Exhibit "P-4", Docket, Volume I, p. 120.
[8] Docket, Volume I, p. 121.
[9] Exhibit "P-5", Docket, Volume I, p. 122.
[10] Exhibits "P-6-1, P-6-2, P-6-3, P-6-4, P-6-5, P-6-6, P-6-7, P,6-8, Docket, Volume I, pp. 317 -324.
[11] Exhibit "P-7", Docket, Volume I, p. 325.
[12] BIR Records, pp. 161-162.

On June 4, 2014, petitioner filed the instant Petition for Review (with Urgent Motion to Suspend Collection of Taxes and to Quash Warrant of Garnishment).

In the hearing held on June 19, 2014, the Court informed the parties that said hearing refers to a Motion to Suspend Collection of Taxes, thus there will only be two matters of concern, i.e. whether petitioner will be prejudiced and whether it is willing to post a bond.[13] In this hearing, petitioner presented as its witness, Ms. Janice B. Reyes, to testify on her Judicial Affidavit filed on June 4, 2014. The respondent's counsel, having failed to appear during the hearing on June 19, 2014, the Court ruled that respondent has waived the right to present evidence. Petitioner was then given by the Court two (2) days to file its Formal Offer of Evidence (FOE) in support of the Motion to Suspend Collection of Taxes while respondent was given two (2) days from receipt of petitioner's FOE to file a Comment thereto.

On June 27, 2014, petitioner filed its FOE in support of the Urgent Motion to Suspend Collection of Taxes and to Quash Warrants of Garnishment. Respondent failed to file his Comment to petitioner's FOE within the time prescribed by the Court.

On July 25, 2014, respondent filed his Answer[14] to the Petition for Review raising the following Special and Affirmative defenses:

> "11. The assessment is already final, executory and demandable due to the failure of the petitioner to submit all the relevant documents in support of its request for reinvestigation in accordance with the pronouncement of the Supreme Court in the case of Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue.
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> 12. Finally, settled is the rule that the tax assessments by tax examiners are presumed correct and made in good faith (Cagayan Robina Sugar Milling Co., vs. Court of Appeals, 342 SCRA 671). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of providing otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of the petitioner to satisfactorily overcome the presumption of regularity and

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[13] TSN on the hearing held on June 19, 2014.
[14] Docket, Volume I, pp. 144-146.

> correctness of the assessment will justify upholding of said assessment notices."

On October 3, 2014, respondent filed his Pre-trial brief[15] which he subsequently amended and filed on November 21, 2014.[16]

Meanwhile, in the hearing held on October 9, 2014, the Court granted the Motion to Suspend Collection of Tax subject to the posting of a surety bond equivalent to one and half times the deficiency VAT or in the amount of Php32,297,907.58 within ten (10) days from receipt of the Resolution.[17]

On November 7, 2014, the Court issued a Resolution approving the surety bond issued by Prudential Guarantee & Assurance, Inc. (PGAI) in the amount of Php32,397,907.58. In the same Resolution, the Court ordered respondent to restrain from enforcing the Warrants of Distraint and Garnishment and/or Levy against petitioner and to suspend the collection of the alleged deficiency VAT until further orders from the Court.[18]

On October 20, 2014, petitioner filed a Supplemental Petition for Review raising the issue of prescription on respondent's right to assess. It averred that the PAN and the FAN were issued beyond the three-year prescriptive period. [19] Respondent then filed his Answer to the Supplemental Petition for Review on October 30, 2014 and dealt with the issue on prescription in this manner:

> 6. Contrary to petitioner's claim, both the Preliminary Assessment Notice and Final Assessment Notice were duly sent to and received by the petitioner.
>
> Under Section 3 (v) of Rule 131 of the Rules of Evidence, there is a disputable presumption that a letter duly directed and mailed was received in the regular course of the mail. Corollary thereto, Section 10 of Rule 13 of the Revised Rules of Court, provides that "service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the Postmaster, whichever date is earlier." om

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[15] *Ibid.*, pp. 172-175.
[16] *Ibid.*, pp. 245-247.
[17] Resolution dated October 9, 2014, Docket, Volume I, pp. 194- 195.
[18] Docket, Volume I, pp. 243-244.
[19] *Ibid*, pp. 199-203.

7. Assuming arguendo that respondent failed to issue the subject assessments within the three (3) year period under Section 203 of the 1997 NIRC, as amended, still the government's right to assess petitioner for deficiency VAT for taxable year 2007 in the total amount of P21,531,938.39 has not yet prescribed.

Sections 222 (a) of the 1997 NIRC, as amended, reads:

Section 222. Exceptions to the Period of Limitation of Assessment and Collection of Taxes.-

(a) In the case of a false and fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided that in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

On April 13, 2015, petitioner filed its Pre-Trial Brief.[20]

On May 15, 2015, the parties submitted their Joint Stipulation of Facts and Issues,[21] and upon approval thereof, the Court issued a Pre-Trial Order on May 19, 2015.[22]

During trial, petitioner presented documentary and testimonial evidence. Petitioner presented the testimony of its Senior Accountant, Janice B. Reyes.

Respondent presented his witnesses, revenue officers Mario H. Eleda and Gemina Salvador and presented documentary exhibits as well as the BIR records.

On September 2, 2015, petitioner filed its Formal Offer of Evidence (FOE) while respondent filed his FOE on November 2, 2016.

In a Resolution dated February 27, 2017[23], the Court admitted all of the respondent's documentary exhibits.

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[20] *Ibid.*, pp. 296-306.
[21] Docket, Volume II, pp. 481-493.
[22] *Ibid.*, pp. 496-503.

Petitioner filed its Memorandum[24] on June 13, 2017 while respondent failed to file his Memorandum within the time prescribed by the Court.

In a Resolution dated June 27, 2017, this case was submitted for decision.[25]

ISSUES

In their JSFI,[26] the parties submitted for resolution the following issues:

a. Whether or not the deficiency VAT assessments against petitioner for calendar year (CY) 2007 are null and void because petitioner did not receive the PAN and FAN, in accordance with the requirements of the law and relevant revenue regulations.

b. Whether or not respondent's right to assess petitioner of deficiency income tax (IT) and VAT for CY 2007 has prescribed.

c. Whether or not the alleged deficiency IT and VAT assessments should be canceled and withdrawn for lack of factual and legal basis.

d. Whether or not the Warrants of Garnishment (WOGs) were validly issued.

PETITIONER'S ARGUMENTS

The petitioner argues that the Court has jurisdiction over the summary collection procedures undertaken by respondent against petitioner via the issuance of WOGs against its several bank accounts pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

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[23] *Ibid.*, pp. 761-763.
[24] *Ibid.*, pp. 791-831.
[25] *Ibid.*, p. 833.
[26] *Supra.*, Note 2.

Petitioner further cites the Supreme Court decision in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 162852, December 16, 2004) as interpretative of its position affirming this Court's jurisdiction on cases involving the validity of warrants of distraint and/or levy and garnishment.

On the main point of the Petition for Review, petitioner challenges the validity of the PAN and the FAN for taxable year 2007 supposedly issued by respondent as it claims it never received these documents thus violating its right to due process. Petitioner relies on Section 228 of the 1997 National Internal Revenue Code (NIRC) which guarantees taxpayers' right to be informed of the law and the facts upon which an assessment is made as implemented by Revenue Regulations (RR) 12-99 requiring the issuance of a PAN and a FAN as part of the due process. These two essential documents not having been received, petitioner submits that the assessments should be canceled and withdrawn.

In its Supplemental Petition for Review[27], petitioner additionally attacked the validity of the FAN for having been issued beyond the three-year prescriptive period. Petitioner argues that its delayed assertion of the defense of prescription is due to its belated review of the BIR records wherein it came across copies of the PAN and the FAN which respondent allegedly issued. The date of issuance of the FAN for its VAT deficiency for taxable year 2007 made petitioner conclude that this was issued beyond the three- year period. Petitioner presented a tabular summary of the filing and payment dates of its VAT liabilities for 2007 and its computation of the last day for the issuance of the VAT assessments per quarter to illustrate that the issuance of the FAN on February 11, 2011 for the 4th quarter of 2007 was twenty seven (27) days late beyond the deadline. We provide the tabular summary below:

Taxable quarter	**Due Date of Filing of VAT Returns**	**Actual Date of Filing of VAT Returns**	**Last day for Issuance of Deficiency VAT Assessment**
Ist Quarter, 2007	April 25, 2007	April 20, 2007	April 25, 2010
2nd Quarter, 2007	July 25, 2007	July 20, 2007	July 25, 2010

[27] Docket, Volume I, pp. 199-203.

3rd Quarter, 2007	October 25, 2007	October 19, 2007	October 25, 2010
4th Quarter, 2007	January 25, 2008	January 21, 2008	January 25, 2011

The failure to validly serve the PAN and the FAN to petitioner, the latter's non-receipt thereof and the issuance of the FAN beyond the three-year period constitute the bases of the petitioner's claim that such assessments are void and should be canceled by this Court.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent insists that the assessment is final, executory and demandable for failure of the petitioner to submit all relevant documents in support of its request for reinvestigation. In addition, respondent invokes the oft-repeated doctrine that assessments are presumed correct and made in good faith, hence, it is incumbent upon the taxpayer to present proof of any irregularities in its issuance. Absent any proof of any irregularities in the performance of official duties, the assessment is rendered valid.

In his Answer to the Supplemental Petition for Review, the respondent (in its Supplemental Answer)[28] claims that the PAN and the FAN were duly sent to and received by the petitioner. As to the issue of prescription of the assessment for taxable year 2007, the respondent argues, without necessarily admitting, that if the assessment was issued beyond the three year period, it is because Section 222 of the NIRC which prescribes a ten year period to assess in cases of fraud or failure to file a return with intent to evade payment of taxes will apply.

As to the substance of the VAT assessment, respondent maintains that the discrepancy resulted from the comparison of the data found in the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching – BOC Data Program and those declared in petitioner's tax returns, hence, assessed in accordance with Sections 105, 107 and 108 of the NIRC and Revenue Memorandum Order (RMO) No. 32-2007.

[28] Docket, Volume I, pp. 216-218.

RULING OF THE COURT

Jurisdiction of the Court of Tax Appeals

Before we delve into the issues raised by both parties in this case, this Court finds it proper to discuss the jurisdiction of this Court to take cognizance of the instant petition.

As a court of special or limited jurisdiction, the CTA can only take cognizance of matters that are within its jurisdiction as provided by Republic Act (R.A.) 1125 as amended by R.A. 9282, thus:

> "Section 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;"* (italics ours).

The Revised Rules of the Court of Tax Appeals (RRCTA), Section 3(a) (1), Rule 4 further provides as follows:

> Sec.3. Cases within the jurisdiction of the Court in Divisions. –
>
> The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (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.* (italics ours).

The instant case does not involve a final decision on a disputed assessment but rather a petition to oppose and challenge the validity of the WOGs served on the various bank accounts of petitioner.

As a general rule, this Court acquires jurisdiction over a decision of the Commissioner of Internal Revenue (CIR) on a "disputed assessment" which in turn is elevated by a taxpayer to this Court via a Petition for Review. However, this Court in many instances have also taken cognizance of cases falling under the category of "other matters" including the determination of the validity of a warrant of distraint and levy and the validity of a waiver of statute of limitations. In the case of *Philippine Journalists, Inc. vs. CIR*[29], the Supreme Court affirmed the jurisdiction of the CTA and clarified the coverage of the term "other matters" as follows:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of the Statue of Limitations was validly effected."

Important also to consider and discuss is the period within which the appeal on the validity of the WOGs and levy should be brought to this Court as this matter is equally essential to determine jurisdiction.

Section 11 and Section 7 (a) (2) of the RRCTA provide the answer, thus:

> "Section 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, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry and the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA *within thirty (30) days* after the receipt of such decision or ruling or

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[29] G.R. No. 162852, December 16, 2004.

after the expiration of the period fixed by law for action as referred to in Section 7 (a) (2) herein" (italics ours)."

Section 7. Jurisdiction. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal as herein provided:

(2) Inaction by 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,"* (italics ours)."

An analysis of the two afore-quoted provisions leads to the conclusion that the thirty-day period to appeal to this Court similarly applies to those cases falling under "other matters" which in the instant case is the validity of the WOGs issued by respondent. The reckoning date of the thirty-day period may not have been mentioned in the aforecited provisions but logic dictates that it should run from the time the taxpayer becomes aware or is notified of the existence of the warrants.

The records show that the representative of petitioner, Mr. Se Woen Park, was made to receive the eight duplicate copies of the eight WOGs[30] on May 5, 2014 during his visit to Revenue Region No. 7. Petitioner then filed a Petition for Review with this Court on June 4, 2014 which is well within the thirty-day period provided under the aforequoted provisions of the RRCTA. Based on these facts, we hold that this Court has jurisdiction to take cognizance of the petition.

Validity of the PAN and the FAN and petitioner's right to due process

At the outset, petitioner denies ever having received copies of the PAN and the FAN covering its alleged VAT deficiencies for taxable year 2007 which is its main reason for assailing the WOGs issued by respondent. Petitioner claims

[30] Exhibits P-6-1 to P-6-8, Docket, Volume I, pp. 124-131.

that its right to due process has been violated due to the failure of respondent to fully comply with the mandatory requirements laid down under Section 228 of the NIRC and RR 12-99, as amended.

Respondent counters that there is a disputable presumption that a letter duly directed and mailed was received in the regular course of mail pursuant to Section 3 (v) of Rule 131 of the Rules of Court and this is the basis for his conclusion that the PAN and the FAN were received by the petitioner, contrary to the latter's assertion that it never received any of these documents.

The records, applicable laws and jurisprudence, however, would show otherwise, and instead, prove that petitioner's arguments are meritorious.

It is a well-entrenched rule that if a taxpayer denies ever having received an assessment from the BIR, it becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[31] Petitioner's witness testified that she never received the PAN and the FAN but admitted receiving some documents from respondent. In the testimony of the Senior Accountant of petitioner, Ms. Janice Reyes[32], she stated, thus:

Q7 – You mentioned that the Company did not receive a PAN or FAN in connection with the deficiency tax assessments. What documents if any, did you receive from the BIR in connection with the aforementioned tax assessments?

A7- The Company received the following documents from the BIR: (i) Letter dated September 3, 2009; (ii) Follow-up Letter dated October 15, 2009, (iii) Letter of Authority No. 2009-00016963 dated May 11, 2010; (iv) Preliminary Collection Letter dated April 24. 2013; (v) Final Notice Before Seizure dated April 24, 201 3; and (vi) Eight Warrants of Garnishments.

In the Supplemental Sworn Statement of Ms. Janice Reyes[33], she reiterated that the company never received the

[31] CIR vs. GJM Philippines Manufacturing Inc., G.R. No. 202695, February 29, 2016; Barcelon Roxas Securities vs. CIR, G.R. No. 157064, August 7, 2006 ; CIR vs. Metro Superama, Inc., G.R. No. 185371, December 8, 2010.
[32] Exhibit "P-16", Docket, Volume I, pp. 441-448.
[33] Exhibit "P-17", Docket, Volume I, pp. 450-464.

PAN and the FAN supposedly issued by respondent for the latter's VAT deficiencies for taxable year 2007, thus:

Q1 – Ms. Witness, in your Answer to Question No. 6 of Sworn Statement dated June 4, 2014, you mentioned that the Bureau of Internal Revenue (BIR) has no right to institute summary proceedings to collect alleged delinquency value-added (VAT) for calendar year 2007 because there was no preliminary assessment notice (PAN) and the final assessment notice (FAN) duly received by Daewoo Engineering and Construction Company Limited (the "Company"), what is your basis for saying this?

A. The Company did not receive any document from the BIR entitled "Preliminary Assessment Notice" or "Final Assessment Notice" or any document advising the Company that a proposed or final assessment has been made against it and explaining the legal and factual basis therefor.

Q2- What is the Company's procedure for receiving documents from the BIR?

A. Normally, the Company's Accounting staff and I, as Senior Accountant receive documents from the BIR. However, whenever the Company's driver stays in the office, he would sometimes receive letters and documents addressed to the Company. We affix our signatures on the receiving copy of the documents or in the appropriate form to signify our receipt of the documents from the BIR.

In answer to the allegations of non-receipt of the PAN and the FAN, respondent presented the judicial affidavit of its witness, [34] Revenue Officer, Gemina Salvador, portions of which are quoted below:

Q- Having testified that you were the Revenue Officer who conducted the collection process, could you elucidate how you conducted the collection process, could you elucidate how you conducted said examination.

A. To start the collection process, I examined the BIR Records. First, I checked if there were assessment notices. Then I ascertained that the PAN was sent on 28 December 2010 and the FAN on 15 April 2011. This is based on Registry Receipt Nos. 5675 and 917 which were appended to the PAN and the FAN, respectively. Afterwards, I verified whether the said account has already been paid. There was no payment made by Daewoo. Respondent then presented the copy of the PAN issued for taxable year 2007 dated October 8, 2010 as

[34] Exhibit "R-17", Docket, Volume II, pp. 720-723.

Exhibit "R-4"[35] and a copy of the FAN issued on February 21, 2011 for deficiency VAT for taxable year 2007 with Formal Letter of Demand and Details of Discrepancies[36], as proof that a PAN and the FAN were issued against petitioner for VAT deficiencies covering the taxable year 2007.

As the trial progressed, a glaring fact emerged on the correct address/es where official notices of the BIR were served to petitioner. It appears from the records that the address indicated in both the PAN and the FAN is the 29th floor, Enterprise Center, Tower I, 6766, Ayala Avenue, Makati which respondent alleges is the address to which the assessment notices have been properly mailed. However, petitioner's witness, Ms. Janice Reyes, testified that her company has transferred its address to **the 15th Floor, the Taipan Place, Ortigas Center, Pasig City** effective 2009. Petitioner's witness further maintained that her company has properly filed an Application for Information Update (BIR Form 1905) with the Revenue District Office No. 47 indicating the said new address as early as December 2, 2009.[37] A Transfer Commitment Form signed by the General Manager of petitioner and filed with the BIR on December 2, 2009 further evidences the official notice of change of address to the BIR as of said date.[38].

In spite of this official notification, the revenue officers still served the PAN and the FAN to the old address in Makati as revealed in the testimony[39] of respondent's witness, Ms. Gemina Salvador, thus:

Q. Based on question No. 5, you mentioned that you prepared a Final Notice Before Seizure dated May 17, 2013, have it signed and caused the service of the Notice thru registered mail, is that correct?

A. Yes that is correct.

Q. You mentioned you served it thru registered mail, can you please confirm what is the address where did you serve this notice?

Xxx xxx xxx

[35] BIR Records, pp. 92-93.
[36] *Ibid.*, pp. 94-96.
[37] Exhibit "P-19", Docket, Volume II, pp. 773.
[38] Exhibit "P-19-2", Docket, Volume II, pp. 776.
[39] TSN, hearing of August 31, 2016.

A. It was sent on Unit 2506 Prestige Tower Ortigas.

Q. – And upon examining the records, you also ascertain the PAN and the FAN, is that correct?

A.- Yes.

Q. What is the address indicated in the PAN and the FAN ?

A. – The address indicated in the PAN and the FAN was along Ayala Avenue.

Q. Can you please refer to the record and state the address?

Q. As indicated here, it is based ....we got it from our ITS or the Integrated Tax System, and it is the official address of Daewoo at that time.

Xxx xxx xxx

Q. And upon examining the records, you also ascertain the PAN and the FAN, is that correct?

A. Yes.

Q.Can you please refer to the record and state the address?

A. 29th Floor, The Enterprise Center Tower I 6766 Ayala Avenue, Makati City.

Q. The address is indicated in the?

A. This address is indicated in the Preliminary Assessment Notice and Final Assessment Notice.

It can be gleaned from the testimony of the revenue officer quoted above that the Final Notice Before Seizure dated April 24, 2013 bears the new address of petitioner and duly served therein but the PAN and the FAN which were dated October 8, 2010 and February 21, 2011, respectively, were still addressed at the previous address in Makati. Interestingly, the notices from the BIR sent *prior* to the dates of the PAN and the FAN were already addressed in their new office in Ortigas. For instance, the BIR Letter addressed to petitioner and signed by the respondent dated September 3, 2009[40] and the BIR's follow up letter dated October 15, 2009[41] were all addressed in the new office address in Ortigas only to revert to the old address in Makati when it issued the PAN and the FAN in 2010 and 2011, respectively. This was testified to by Janice Reyes during the hearing on April 3, 2017, thus:

Q. – Ms. Witness, you mentioned a while ago that you received the document, the Notice of Informal Conference on June 1, 2010. Is that correct?

A. – Yes, Sir.

Q.- You also manifested that you did a change of address and you informed (sic) the Bureau of Internal Revenue (BIR)?

A. Yes Sir.

Q. And during the interim, how were you able to receive this document?

A. It was delivered by the staff from BIR in our new office address.

Justice Castaneda – So it was in your new office address?

A.Yes, your Honors.

In fact, petitioner's witness testified that even the Notice of Informal Conference was properly received by them on June 1, 2010 as well as the Letter of Authority (LOA) at their address in Ortigas.[42] Both of these documents were delivered by the BIR staff to their new address. We cannot help but conclude that there must have been some miscommunication among the revenue officers as to the correct address of petitioner, particularly in the years 2010 and 2011 when the PAN and the FAN were issued and supposedly served upon petitioner.

[40] Exhibit "P-l", Docket, Volume I, pp. 117.
[41] Exhibit "P-2", Docket, Volume I, pp. 118.
[42] TSN, hearing held on April 3, 2017.

On his part, the respondent did not present sufficient evidence to disprove the contention of petitioner that the PAN and the FAN were never received by the petitioner but only confronted this issue by his bare allegations that it was received by the petitioner based on the evidentiary rule provided in Section 3 (v) Rule 131 of the Rules of Evidence and Section 10, Rule 13 of the Revised Rules of Court, thus:

> "Rule 131
>
> Section 3. Disputable presumptions. –
>
> (v) That a letter duly directed and mailed was received in the regular course of mail;"
>
> "Rule 13
>
> Section 10. Completeness of service.- Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee or after five (5 days from the date he received the first notice of the postmaster, whichever date is earlier."

Respondent did, however, present copies of the PAN and the FAN during trial as Exhibits "R-4" [43] and "R-5" [44], respectively.

Such general assertions of respondent pale in comparison to the clear and convincing documentary and testimonial evidence that the PAN and the FAN contained the former address of petitioner and were probably wrongly served in said location, hence giving credence to the allegation of petitioner that it did not receive the subject PAN and FAN.

In the case of *Gonzalo Nava vs. CIR*[45], the Supreme Court had the occasion to rule that the presumption as regards receipt of mailed letters will apply only if certain conditions are met, thus:

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[43] BIR Records, pp. 92-93.
[44] *Ibid.*, pp. 94-96.
[45] G.R. No. L-19470, January 30, 1965.

> "The facts to be proved to raise this presumption are, (a) that the letter *was properly addressed* with postage prepaid, (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted in the ordinary course of the mail." (italics ours)

It is important to note that one of the essential elements needed in order to raise the presumption under Section 3 (v) Rule 131 is that the letter was properly addressed to the recipient. Unfortunately, the address in both the PAN and the FAN reflected the former address of petitioner instead of the new and updated address thus the presumption does not apply. In the case of *CIR vs. BASF Coating + Inks Phils, Inc.*[46], the Supreme Court ruled that one of the requirements of a valid assessment notice is that the letter notice must be *properly addressed* and that it is not enough that notice is sent by registered mail.

Due process in the issuance of a deficiency tax assessment covers both substantive and procedural aspects consisting of the service of both the PAN and the FAN as specified under Section 228 of the 1997 NIRC, as amended, and as implemented by RR No. 12-99, thus:

> 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 The taxpayer 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 the 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.
>
> Revenue Regulations No. 12-99
>
> Sec. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.-
>
> 3.1. Mode of procedure 1n the issuance of a deficiency tax assessment:

[46] G.R. No. 198677, November 26. 2014.

> 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 finding 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. 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.
>
> xxx xxx xxx

Under the aforequoted provisions of the law and implementing regulations, the CIR or his duly authorized representative is required to issue a PAN and the FAN in cases where there are findings of tax deficiencies. Failure to do so constitutes denial of a taxpayer's right to due process.

The testimonial and documentary evidence have established that the PAN and the FAN were not received by petitioner because of the wrong address indicated therein which was uncontroverted by respondent. The Supreme Court has already ruled that failure to prove receipt of the assessment raises no other conclusion that no assessment was issued.[47]

Again we cite the case of *CIR vs. BASF + Inks Phils, Inc.* when the Supreme Court ruled thus:

> "It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual for a citizen's right is amply protected by the Bill of Rights under the Constitution."

The exclusionary rule or the doctrine of the "fruit of the poisonous tree" may equally apply to WOGs which originated from a void assessment, and hence should have no effect. It is well-settled that a void assessment bears no valid fruit.[48]

WHEREFORE, the instant Petition for Review is hereby **GRANTED.**

Accordingly, the PAN and the FAN dated October 8, 2010 and April 15, 2011, respectively and Warrants of Garnishment issued incident thereto are cancelled and declared **NULL and VOID.**

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[47] CIR vs. GJM Phils Manufacturing Inc., G.R. No. 202695, February 29, 2016.
[48] Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100 . December 10, 2014.

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.
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice