REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONWIDE HEALTH SYSTEMS BAGUIO, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9507

Members:

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

Promulgated:

OCT 15 2019 9:40 Am

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DECISION

***BACORRO-VILLENA, J.*:**

At bar is a petition for review filed by Nationwide Health Systems Baguio, Inc. (**NHSBI/petitioner**), pursuant to Rule 8[1] of the Revised Rules of the Court of Tax Appeals (**RRCTA**), against the

[1] Procedure in Civil Cases.

. . .

SEC. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (n)

Commissioner of Internal Revenue (**CIR/respondent**) on the latter's denial of its protest on a tax deficiency assessment for the taxable year 2012, in the total amount of ₱5,846,348.16.

THE PARTIES

Petitioner NHSBI is a corporation duly formed and organized under the laws of the Republic of the Philippines, with principal address located at Rm. 01 G/F, EDY Building, 144 Kisad Road, Baguio, City.

Respondent CIR, on the other hand, is the chief of the Bureau of Internal Revenue (**BIR**), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.

FACTS OF THE CASE

On 27 August 2015, respondent served a formal letter of demand (**FLD**) on petitioner for the payment of ₱5,846,348.16 as deficiency tax for the taxable year 2012. In disagreement with respondent's action, petitioner filed its protest on 30 September 2015. In a letter dated 04 January 2016, the BIR, Revenue Region No. 2, denied petitioner's protest. Finding the letter vague (as to whether or not it was the Final Decision on Disputed Assessment [**FDDA**]), petitioner appealed the denial to respondent.[2] Although there was yet no action on petitioner's appeal, the Revenue District Office (**RDO**) of Revenue District No. 8 issued a Preliminary Collection Letter (**PCL**)[3].

Thereafter, a Final Notice Before Seizure (**FNBS**) was also issued against petitioner.[4] In reply thereto, petitioner wrote the RDO of Revenue District No. 8, informing him that respondent had yet to act on its appeal. Another letter[5] was sent to Revenue Region No. 2, RDO No. 8 and respondent, to follow-up on its request for reconsideration but to no avail. Instead, respondent was served with a warrant of

[2] Letter-Protest dated 02 February 2016, Exhibit "P-19".
[3] Dated 19 September 2016, Exhibit "P-21".
[4] Dated 28 September 2016, Exhibit "P-22".
[5] Dated 28 October 2016, Exhibit "P-27".

distraint and/or levy (**WDL**)[6]. Deeming that the WDL was respondent's final act of denial to its protest, it then filed the instant petition.

PROCEEDINGS BEFORE THE COURT

In this petition, petitioner alleged that respondent sought to collect the following as tax deficiency:

Income Tax	₱ 491,842.08
Value Added Tax (VAT)	₱ 5,115,878.42
Expanded Withholding Tax (EWT)	₱ 28,434.04
Improperly Accumulate[d] Earnings Tax (IAET)	₱ 210,193.62

According to petitioner, the above computation was based on respondent's findings that its laboratory fees in the amount of ₱59,200.04 and its courier expenses of ₱60,924.96 were not substantiated. Respondent also found that it allegedly made an over-declaration of its rent expense in the amount of ₱208,336.25, which amount (respondent claimed) should be added back as part of its taxable income.

On the VAT deficiency, petitioner also claimed that respondent found it to be not engaged in laboratory services hence it was not to be exempted from VAT under Section 109[7] of the National Internal Revenue Code (**NIRC**). Thus, respondent insisted for it to pay the VAT pursuant to Section 105[8] of the NIRC.

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[6] Dated 26 October 2016, Exhibit "P-29".

[7] **Sec. 109.** *Exempt Transactions.* - The following shall be exempt from the value-added tax:

...

(l) Medical, dental, hospital and veterinary services subject to the provisions of Section 17 of Republic Act No. 7716, as amended...

...

[8] **Sec. 105.** *Persons Liable.* - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person

As regards the Expanded Withholding Tax (**EWT**), the amount that respondent sought to collect was allegedly the result of discrepancy on the computation of the withholding tax due. Respondent also insisted on the payment of petitioner's improperly accumulated earnings tax (**IAET**).

In its petition, petitioner maintained that the assessment on deficiency tax was erroneous on the following grounds, to wit: (1) it could not be liable for income tax on unsubstantiated laboratory fees and courier expenses because it availed of the optional standard deduction (**OSD**); (2) it was not afforded priority in the investigation policy despite the OSD; (3) there was no breakdown on the amount disallowed and how it was determined, including the alleged over-declaration of the rent expense; (4) it is exempted from VAT because of Section 109 of the NIRC; (5) its hospital activities, medical and dental practices are not subject to VAT *per* Section 106[9] of the NIRC; (6) the NIRC and revenue regulations do not mention that the absence of laboratory services will not exempt a taxpayer from VAT liabilities; (7) it could not be liable for IAET because it declared dividends on a regular basis and it made no accumulation; and, (8) it nevertheless attached to its protest a check in payment of the EWT.

On insisting that the petition be given due course, petitioner also contended that respondent's assessment was void since it failed to comply with Section 228[10] of the NIRC, as implemented by

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regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business.

9 Value-Added Tax on Sale of Goods or Properties.

10 **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

Revenue Regulations (**RR**) No. 12-99[11], as further implemented by RR No. 18-13[12]. Petitioner thus prayed:

> ...
>
> **WHEREFORE**, petitioner most respectfully prays of this Honorable Court that:
>
> 1. The Petition be given due course; and[,]
> 2. After due proceedings, judgment be rendered setting aside the Tax Notices and assessments sent by Respondent, declaring that the assessments VOID for lack of factual and legal bases and for utter violation of petitioner's right to due process and accordingly the preliminary collection letter and final notice before seizure and warrant of distraint and levy be lifted, cancelled or revoked.
>
> Other relief just and equitable are likewise prayed for.[13]
>
> ...

(d) When the excise tax due on excisable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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

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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[11] 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.

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

[13] *Rollo*, Volume I, pp. 27-28.

In answer to petitioner's claims, respondent maintained that its assessment for tax deficiency was correct. Particularly, petitioner's claim for laboratory fees and courier expenses was not duly substantiated; it did not file VAT returns during the taxable year; it did not conduct laboratory services to exempt it from VAT; there was discrepancy on the computation of withholding tax due hence liable for EWT; and, petitioner had improperly accumulated earnings despite declared dividends to stockholders thus it should also be liable for IAET.[14]

Respondent added that, RR No. 2-2001 and Revenue Memorandum Circular (**RMC**) No. 35-2011[15], also support the

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14 Answer, pp. 2-3; *Rollo*, Volume I, pp. 218-219.
More particularly on the IAET, Section 29 of the NIRC provides that:

...

Sec. 29. *Imposition of Improperly Accumulated Earnings Tax.* –

(A) *In General.* – In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.

(B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* –

(1) In General. – The Improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or disturbed.

...

(C) *Evidence of Purpose to Avoid Income Tax.* –

(1) *Prima Facie Evidence.* – [T]he fact that any corporation is a mere holding company or investment company shall be prima facie evidence of a purpose to avoid the tax upon its shareholders or members.
(2) *Evidence Determinative of Purpose.* – The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by the clear preponderance of evidence, shall prove to the contrary.

...

15 RR No. 2-2001.
Sec. 2. Concept of Improperly Accumulated Earnings Tax (IAET). - Pursuant to Section 29 of the Code, there is imposed for each taxable year, in addition to other taxes imposed under Title II of the Tax Code of 1997, a tax equal to 10% of the improperly accumulated taxable income of corporations formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders. The rationale is that if the earnings and profits were distributed, the shareholders would then be liable to income tax thereon, whereas if the distribution were not made to them, they would incur no tax in respect to the undistributed earnings and profits of the corporation. Thus, a tax is being imposed in the nature of a penalty to the corporation for the improper accumulation of its earnings, and as a form of deterrent to the avoidance of tax on shareholders who are supposed to pay dividends tax on the earnings distributed to them by the corporation.

The touchstone of the liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, if the failure to pay dividends is due to some other assessment of IAET. He added that he also complied with the requirements of Section 228 of the NIRC. Moreover, assessments are presumed correct. In the absence of proof of any regularities in the performance of official duties, the assessment should not be disturbed.

During the pre-trial, the parties agreed that the issue to be resolved is – *whether petitioner is liable to pay the assessed deficiency income tax, VAT and EWT, and IAET, plus surcharge and interests.*[16]

In a Joint Stipulation Facts and Issues, the parties admitted the existence of the following documents:

...
a. Formal Letter of Demand (FLD) dated 27 August 2015[;]
b. Protest to the FLD dated 30 September 2015[;]
c. Denial of Protest Letter to FLD dated 04 January 2016[;]
d. Letter-Protest/Reconsideration to the Office of the Commissioner of Internal Revenue (CIR) dated 02 February 2016[;]
e. Preliminary Collection Letter (PCL) dated 19 September 2016[;]
f. Final Notice Before Seizure (FNBS) dated 28 September 2016[;]
g. Reply letter to the PCL dated 07 October 2016[;]
h. Reply letter to the FNBS dated 12 October 2016[;]
i. Amended reply letter to the PCL dated 19 October 2016[;]
j. Amended reply letter to the FNBS dated 19 October 2016[;]
k. Letter addressed to BIR, RDO No. 8, dated 28 October 2016[;]
l. Follow-up letter addressed to the CIR dated 28 October 2016 regarding its request for reconsideration [; and,]
m. Warrant of Distraint and/or Levy (WDL) dated 26 October 2016.[17]
...

In the trial that ensued thereafter, petitioner first presented Christopher A. Tomas (**Tomas**), who declared that he was petitioner's internal accountant and based on his evaluation, petitioner was not to

causes, such as the use of undistributed earnings and profits for the **reasonable needs of the business**, such purpose would not generally make the accumulated or undistributed earnings subject to the tax. However, if there is a determination that a corporation had accumulated income beyond the reasonable needs of the business, the 10% improperly accumulated earnings shall be imposed. (Emphasis supplied)

16 *Rollo*, Volume I, p. 595.

17 Id., p. 616; Pre-Trial Order dated 07 May 2018; id., p. 684.

be liable for the alleged tax deficiency assessment for 2012. Contrary to respondent's claim, the laboratory fees of ₱59,200.04 and the courier expenses of ₱60,924.96 were duly substantiated with receipts. According to him, the laboratory fees of ₱8,309,791.00 in the Audited Financial Statement (**AFS**) were covered by official receipts (**ORs**) issued by Metro Baguio Laboratories (**MBL**) under a sub-contract arrangement.[18] As for the courier expenses of ₱60,924.96, the same was also covered by ORs from courier companies.[19]

Later, Tomas also explained that the disallowed rent expense (due to alleged over-declaration) was arrived at after adding the rent expense per BIR Form No. 1601-E (₱688,429.95) and VAT rent expense (₱82,611.59), a claimed expense since petitioner is VAT-exempt pursuant to Section 109 of the NIRC. The amount of ₱688,429.95 was the sum of all the rental expenses per BIR Form No. 1601-E.[20]

Tomas continued to declare that, except for the amount of ₱31,422.40 (for January 2012), the amounts were reflected in BIR Forms No. 1601-E[21] and what was withheld and remitted for January 2012 was ₱1,571.12. As regards the VAT on the rentals being treated as rental expense, he explained that petitioner is not VAT-registered and thus could not claim input tax from it. He maintained that petitioner is not liable for VAT and its transactions (hospital, medical and dental activities) are exempted from VAT *per* Section 109 (l) of the NIRC. Neither should it be liable for IAET since it was not formed for the purpose of avoiding the income tax, with respect to its shareholders. As to the EWT, it was already paid.

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18 Id., pp. 648-649.

19 Id., p. 649.

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MONTH	RENT EXPENSE
JANUARY	31,422.40
FEBRUARY	31,422.40
MARCH	67,712.21
APRIL	31,422.37
MAY	51,741.57
JUNE	44,351.07
JULY	31,422.57
AUGUST	60,994.77
SEPTEMBER	59,740.00
OCTOBER	59,740.00
NOVEMBER	125,727.06
DECEMBER	92,733.53
	688,429.95

21 Exhibits "T" to "T-12".

Teresita B. Benitez (**Benitez**)[22] was next to take the witness stand where she identified her Amended Judicial Affidavit.[23] There, she declared that she is petitioner's Treasurer and she received petitioner's formal demand (for petitioner) to pay income tax, VAT, IAET and EWT for 2012.[24] Immediately, she contacted a Certified Public Accountant (**CPA**)[25] and secured the services of a lawyer.[26] Thereafter, upon the lawyer's advice, a protest letter dated 30 September 2015 was filed with the BIR.[27] Later, Regional Director Eduardo T. Bajador (**Bajador**) denied the protest through a letter dated 04 January 2016.[28] Petitioner appealed the denial in another Protest Letter/Request for Reconsideration dated 02 February 2016.[29] The letter was received the following day but it was not acted on and instead, petitioner received, on 05 October 2016, a PCL dated 19 September 2016 and on 11 October 2016, a FNBS dated 28 September 2016.[30]

Benitez continued that Reply-Letters were sent out requesting the cancellation of the PCL and FNBS because respondent had yet to act on its Protest Letter/Request for Reconsideration dated 02 February 2016. Moreover, the PCL and FNBS were issued without prior FDDA.[31] BIR did not again reply or act on the Reply-Letters so another follow-up letter was sent to respondent and also to the Regional Director of Baguio City.[32] Again, there were no responses. Instead, petitioner received a WDL dated 26 October 2016.[33]

Atty. Epifania Q. Navarro-Mendoza (**Atty. Mendoza**)[34] also took the witness stand where she declared that respondent's tax assessment against petitioner for 2012 was void for failure to comply with the rules and regulations of tax notices to taxpayers. Petitioner was not served with a Final Assessment Notice (**FAN**) but a mere FLD, without mention of date for payment of the alleged tax deficiency. She likewise declared that petitioner's protest was not acted upon hence it did not receive any FDDA from respondent. What petitioner received

22 TSN dated 17 July 2018.
23 Exhibit "P-45", *Rollo*, Volume II, pp. 843-852.
24 See Exhibit "P-10".
25 Atty. Epifania Q. Navarro-Mendoza.
26 Mendoza Navarro-Mendoza and Partners Law Offices.
27 Exhibit "P-11".
28 Exhibit "P-18".
29 Exhibit "P-19".
30 See Exhibits "P-21" and "P-22", respectively.
31 Exhibits "P-23" to "P-26".
32 Exhibits "P-27" and "P-28".
33 Exhibit "P-29".
34 See Amended Judicial Affidavit, Exhibit "P-46", *Rollo*, Volume II, pp. 892-914.

were only PCL, FNBS and WDL. She added that, based on her long years of practice as a CPA-lawyer, petitioner could not also be held liable for deficiency income, VAT, IAET and EWT as it previously availed of the OSD and is engaged in exempt transactions and regularly declared dividends to stockholders.

Atty. Mendoza also declared that, contrary to the respondent's claim, the laboratory fees of ₱59,200.04 and courier expenses of ₱60,924.96 were beginner's expenses which need not be substantiated, especially after petitioner availed of the OSD. Thus, there was no legal basis for the tax deficiency assessment and for the imposition of interest and compromise penalty. Moreover, since petitioner availed OSD, it should have been accorded priority in investigation.

Atty. Mendoza reiterated that petitioner should not be held liable for VAT deficiency because: (1) it is not a VAT-registered taxpayer since its transactions deal with hospital, medical and dental services and activities, which are VAT-exempt; (2) respondent's basis for not deeming petitioner to be VAT-exempt because it was not conducting laboratory services was erroneous as the NIRC provides no exception to the exemption; and, (3) it was engaged in the activities similar to petitioner, which was issued with a Tax Credit Certificate for the refund of VAT erroneously collected.[35] She also pointed to the actual corporate activities stated in the Certificate of Registration with BIR and in the Articles of Incorporation to support her claim.[36]

Asked of petitioner's request of the EWT, Atty. Mendoza explained that it was paid *per* advice of their law office. The advice was made on the basis of the cost of the time that petitioner will spend to dispute it (EWT).[37]

Later in her testimony, Atty. Mendoza stated that, on 18 January 2016, she received the letter-denial of the protest (dated 04 January 2016) that Bajador issued.[38] The letter-denial maintained that petitioner's laboratory fees and courier expenses were part of the direct cost of services and not part of the allowable deduction.

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35 Exhibits "P-15" and "P-16"; photocopy, with explanation that the original could no longer be located at the BIR Office; *Rollo*, Volume II, pp. 900-901.

36 Exhibits "P-13" and "P-14".

37 See BIR Tax Payment Deposit Slip dated 06 October 2015; Exhibit "P-17".

38 Exhibit "P-18".

Likewise, it was MBL that did laboratory examinations and not petitioner. The BIR also insisted that petitioner is a mere conduit and its services are limited to giving professional advice and recommendations to clients who wish to go abroad. As for the IAET, the BIR used the formula in Section 29[39] of the NIRC and based thereon, petitioner had IAET although it regularly declared dividends for 2012.

Respondent did not conduct any cross examination.[40]

Christopher G. Boco (**Boco**) assumed the witness stand next. He is the independent Certified Public Accountant (**ICPA**) commissioned to examine and audit petitioner's documents. Essentially, he testified the result of his examination and audit, and concluded that: (1) petitioner's laboratory fees in the AFS matched the total amount of petitioner's ORs then petitioner correctly reported and substantiated its laboratory fees of ₱8,309,791.00 as direct cost; (2) there was very minimal discrepancy as regards the amount of courier expenses reflected in the AFS and ORs (which could be attributed to petty cash replenishments; and, (3) since the EWT for the rent expense in the amount of ₱43,267.04 had already been paid, the expense shall now be deductible item in the gross income.[41] Boco maintained that petitioner could not be held liable for income tax deficiency since it was able to substantiate its laboratory expenses and there was no over-declaration of rent expense. All the expenses were ordinary and necessary business expenses duly supported with documents. Particularly, the deduction in the AFS and the receipted amounts from MBL totalled correctly in the amount of ₱8,309,791.00. On the other hand, the small discrepancy in the courier fees (from ₱60,924.96 to ₱57,830.20) resulted when he computed the 92 ORs issued by ATS Express, Inc. and Wide World Express Corporation. The discrepancy could be attributed to petty cash replenishments which petitioner's taxpayer

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39 **Sec. 29.** *Imposition of Improperly Accumulated Earnings Tax.* -
(A) *In General.* - In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.
(B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* -
(1) *In General.* - The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.
...

40 Order dated 17 July 2018, *Rollo*, Volume II, pp. 1076-1077.

41 Judicial Affidavit, Exhibit "P-49".

was not able to retrieve because of time constraint. Considering the very minimal discrepancy, petitioner's courier expenses may still be considered well-substantiated. As regards the rent expense of ₱771,041.54; there was a minor discrepancy from ₱865,342.80 in the amount of ₱94,301.30. *Per* AFS, however, ₱208,335.25 was the amount of disallowed rent. On the EWT, since it was duly paid, it should be a deductible item from the gross income.

No cross examination was conducted.[42]

Petitioner thereafter offered its exhibits, from Exhibit "P-1" to "P-49-A".[43] After it rested its case, respondent's witnesses Karen

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42 See Order dated 04 September 2018, *Rollo*, Volume II, pp. 1315-1316.

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Exhibit "**P-1**"	-	Judicial Affidavit of Christopher G. Boco dated 09 May 2018 (for his commissioning as ICPA);
Exhibit "**P-1-A**"	-	Signature of Christopher G. Boco in his Judicial Affidavit dated 09 May 2018;
Exhibit "**P-2**"	-	Resume of Christopher G. Boco;
Exhibit "**P-3**"	-	Certified Public Accountant Certification of Christopher G. Boco from the PRC;
Exhibit "**P-4**"	-	Forensic Accountant Certification of Christopher G. Boco from the Institute of Certified Forensic Accountants;
Exhibit "**P-5**"	-	Certificate of Accreditation of Christopher G. Boco from the Board of Accountancy;
Exhibit "**P-6**"	-	Certificate of Accreditation as tax Practitioner of Christopher G. Boco issued by The BIR;
Exhibit "**P-7**"	-	Print Screen of the list of Cooperative External Auditors reflected in the website of the Cooperative Development Authority that already includes the name, address, age, PICPA chapter affiliation, contact number and CEA number of Christopher G. Boco;
Exhibit "**P-8**" to "**P-8-K**"	-	Official receipts for Laboratory Expenses;
Exhibit "**P-9**" to "**P-9-MMMM**"	-	Official receipts-Courier Expense;
Exhibit "**P-10**"	-	Formal Letter of Demand (FLD) dated 27 August 2015 with Details of Discrepancies;
Exhibit "**P-11**"	-	Protest Letter to FLD dated 30 September 2015;
Exhibit "**P-12**"	-	Annual Income Tax Return of Nationwide Health Systems Baguio, Inc. for the Year 2012;
Exhibit "**P-13**"	-	Certificate of Registration (COR) of Nationwide Health Systems Baguio, Inc.
Exhibit "**P-14**"	-	First page of Petitioner's Articles of Incorporation (AOI) of Nationwide Health Systems Baguio, Inc.;
Exhibit "**P-15**"	-	Letter of Nationwide Health Systems, Inc. to BIR Makati dated 01 March 2006;
Exhibit "**P-16**"	-	Tax Credit Certificate of Nationwide Health Systems, Inc.
Exhibit "**P-17**"	-	BIR Tax payment Deposit Slip dated 06 October 2015, evidencing payment of Expanded Withholding Tax (EWT) in the amount of P28,434.04;
Exhibit "**P-18**"	-	Letter of Reg. Dir. Eduardo Bajador of Revenue Region No. 02, Baguio City dated 04 January 2016 (Denial of Protest to FLD);
Exhibit "**P-19**"	-	Receiving Copy of the Protest Letter/Request for Reconsideration (with Entry of Appearance of Counsel) addressed and served to the Office of the Commissioner of Internal Revenue dated 02 February 2016;
Exhibit "**P-20**"	-	Audited Financial Statements of Nationwide Health Systems Baguio, Inc.;

Tresmanio Valeros (**Valeros**) and Rhodaline Fortea Ramelo (**Ramelo**) assumed the witness stand.

On the witness stand, Valeros declared that she is the Revenue Officer who conducted the audit and investigation of petition for taxable year 2012. Acting on the Letter of Authority (**LOA**)[44] given to her, a letter dated 18 March 2014 was sent to respondent.[45] No reply came so a Final Notice for Presentation of Records dated 07 April 2014

Exhibit "**P-21**" -	Preliminary Collection Letter (PCL) issued by Revenue District No. 8 dated 19 September 2016;
Exhibit "**P-22**" -	Final Notice Before Seizure (FNBS) issued by Revenue District No. 8 dated 28 September 2016;
Exhibit "**P-23**" -	Reply Letter to PCL addressed to BIR, RDO No. 08, Baguio City dated 07 October 2016;
Exhibit "**P-24**" -	Amended Reply letter to PCL addressed to BIR, RDO No. 8, Baguio City, dated 19 October 2016;
Exhibit "**P-25**" -	Reply letter to FNBS addressed to BIR, RDO No. 08, Baguio City dated 12 October 2016;
Exhibit "**P-26**" -	Amended Reply letter to FNBS addressed to BIR, RDO No. 8, Baguio City dated 19 October 2016;
Exhibit "**P-27**" -	Follow-Up Letter addressed to the Office of the Commissioner of Internal Revenue dated 28 October 2016 regarding the resolution for the request of reconsideration;
Exhibit "**P-28**" -	Letter to RDO No. 8, Baguio City, dated 28 October 2016 with attached registry receipt no. 686134697ZZ and LBC Official Receipt No. PAT0110000140525;
Exhibit "**P-29**" -	Warrant of Distraint and/or Levy dated 26 January 2016;
Exhibit "**P-30**" -	Curriculum Vitae of Atty. Epifania Q. Navarro-Mendoza, CPA;
Exhibit "**P-31**" -	BIR form 1601-E (₱8,949.53) for the Month of **January** 2012;
Exhibit "**P-32**" -	BIR form 1601-E for the Month of February 2012;
Exhibit "**P-33-A**" -	BIR form 1601-E ([₱]15,793.11) for the Month of **March** 2012;
Exhibit "**P-34**" -	BIR form 1601-E for the Month of April 2012;
Exhibit "**P-35**" -	BIR form 1601-E for the Month of May 2012;
Exhibit "**P-36**" -	BIR form 1601-E for the Month of June 2012;
Exhibit "**P-37**" -	BIR form 1601-E for the Month of July 2012;
Exhibit "**P-38**" -	BIR form 1601-E (₱9,902.06) for the Month of **August** 2012;
Exhibit "**P-39**" -	BIR form 1601-E for the Month of September 2012;
Exhibit "**P-40**" -	BIR form 1601-E for the Month of October 2012;
Exhibit "**P-41**" -	BIR form 1601-E for the Month of November 2012;
Exhibit "**P-42**" -	BIR form 1601-E for the Month of December 2012;
Exhibit "**P-43**" -	Request Letter of Nationwide Health Systems, Inc. addressed to RDO No. 047-Makati City dated 23 May 2018 (to secure certified true copy of Tax Credit Certificate No. 000001360 issued on 26 March 2004);
Exhibit "**P-44**" -	Judicial Affidavit of Christopher Tomas;
Exhibit "**P-44-A**" -	Signature of Christopher Tomas in his Judicial Affidavit;
Exhibit "**P-45**" -	Judicial Affidavit of Teresita B. Benitez;
Exhibit "**P-45-A**" -	Signature of Teresita B. Benitez in [her] Judicial Affidavit;
Exhibit "**P-46**" -	Judicial Affidavit of Atty. Epifania Q. Navarro-Mendoza;
Exhibit "**P-46-A**" -	Signature of Atty. Epifania Q. Navarro-Mendoza in her Judicial Affidavit;
Exhibit "**P-47**" -	Compliance;
Exhibit "**P-48**" -	ICPA Report of Christopher G. Boco;
Exhibit "**P-48-A**" -	Signature of Christopher G. Boco in his ICPA Report;
Exhibit "**P-48-B**" -	Compact Disk [CD] containing the Scanned ICPA Report;
Exhibit "**P-49**" -	Judicial Affidavit of Christopher G. Boco; and,
Exhibit "**P-49-A**" -	Signature of Christopher G. Boco in his Judicial Affidavit.

44 Exhibit "R-1".
45 Exhibit "R-2".

was served on petitioner. There, petitioner was required to furnish the BIR with documents and pertinent records relative to its income and other tax liabilities for the year 2012.[46] Petitioner did not comply hence on 16 May 2014, petitioner was given a Second and Final Report for Presentation of Records on 12 May 2014.[47] Petitioner again did not comply hence a 5-Day Notice Before Issuance of Subpoena *Duces Tecum* dated 30 July 2014 was also issued; this time around, petitioner complied and submitted some of the documents (from which an audit examination was conducted). From petitioner's documents, BIR found it liable for deficiency income taxes, VAT, IAET and EWT.

Valeros also declared that, in a letter dated 31 October 2014, petitioner was informed of the audit findings and was also made aware of the details of the discrepancy.[48] Later, petitioner was also requested to submit additional documents.[49] Petitioner complied but discrepancies were still noted hence in a letter dated 19 June 2015, petitioner was again informed of the result of the audit.[50] Since their office did not receive any refute from petitioner, she recommended the issuance of a Preliminary Assessment Notice (**PAN**).[51] The matter was later on transmitted to the Assessment Division, through the Regional Director's Office of Revenue Region No. 2.[52] Asked of the PAN's basis, Valeros explained that petitioner availed OSD so the audit was limited to the verification of cost of services (to determine where to base the 40% OSD and expenses subject withholding tax). As a result, it was found that the laboratory fees and courier expenses in the amount of ₱59,200.04 and ₱60,924.96, respectively, were not substantiated. Pursuant to Section 34(A)(1) of the NIRC[53], the amounts were

46 Exhibit "R-3".
47 Exhibit "R-4".
48 Exhibits "R-6" and "R-6-A".
49 Letter dated 07 January 2015 and served on petitioner on the same date; See Exhibit "R-7".
50 Exhibit "R-8".
51 See Memoranda dated 07 July 2015, Exhibit "R-9".
52 See Letter dated 21 July 2015, Exhibit "R-10".
53 **Sec. 34**. *Deductions from Gross Income*. – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income;

(A) Expenses. –

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

(a) In General. – There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:

disallowed. Likewise, the rent expense of ₱208,335.25 was also over declared and had to be added back to petitioner's taxable income pursuant to Section 34(A)(b) and (K) of the NIRC.

Valeros also testified that, it was actually MBL that did all of petitioner's supposed laboratory services. On a monthly basis, MBL billed petitioner for the services it rendered. Petitioner then merely gave professional advice and recommendation, and billed their client for professional fees, inclusive of laboratory services. Since petitioner has not really been conducting laboratory services then it could not be deemed exempted from liabilities under Section 109 of the NIRC. Furthermore, because it did not file or pay any VAT returns, it was assessed for deficiency VAT.

On petitioner's IAET, Valeros explained that, while petitioner declared dividends to its stockholders, the dividends declared were not enough for them to be not subjected to the said tax (pursuant to Section 29(B)(I) of the NIRC).[54]

(i) A reasonable allowance for salaries, wages, and other forms of compensation for personal services actually rendered, including the grossed-up monetary value of fringe benefit furnished or granted by the employer to the employee: Provided, That the final tax imposed under Section 33 hereof has been paid;

(ii) A reasonable allowance for travel expenses, here and abroad, while away from home in the pursuit of trade, business or profession;

(iii) A reasonable allowance for rentals and/or other payments which are required as a condition for the continued use or possession, for purposes of the trade, business or profession, of property to which the taxpayer has not taken or is not taking title or in which he has no equity other than that of a lessee, user of possessor;

(iv) A reasonable allowance for entertainment, amusement and recreation expenses during the taxable year, that are directly connected to the development, management and operation of the trade, business or profession of the taxpayer, or that are directly related to or in furtherance of the conduct of his or its trade, business or exercise of a profession not to exceed such ceilings as the Secretary of Finance may, by rules and regulations prescribe, upon recommendation of the Commissioner, taking into account the needs as well as the special circumstances, nature and character of the industry, trade, business, or profession of the taxpayer. Provided, That any expense incurred for entertainment, amusement or recreation that is contrary to law, morals public policy or public order shall in no case be allowed as a deduction.

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

...

54 Judicial Affidavit, Exhibit "R-15", *Rollo*, Volume I, pp. 287-293.

Ramelo[55] also took the witness stand where she declared that she is a Revenue Officer of BIR and assigned at the Assessment Division of Revenue Region No. 2. After Valeros evaluated petitioner's case, the entire case docket was forwarded to her. She went over it and found Valeros' assessment to be correct hence, she then recommended the issuance of PAN dated 28 July 2015. The PAN and the details of discrepancy were served on petitioner but no reply (from it) came. She then recommended that the FLD with Details of Discrepancies and Audit Result/Assessment Notice be served next on petitioner.[56] To support her claim, she presented a registry receipt card showing that the same was sent to petitioner.[57]

Later, respondent offered his evidence and rested his case.[58] The Court thereafter admitted respondent's exhibits, subject to a further evaluation and/or appreciation of their materialized relevancy to the issues in the case.[59]

Subsequently, both parties submitted their memoranda, reiterating their respective stances on the issues of the case at hand.[60] Essentially, petitioner assailed BIR's assessment to be void and violative of due process since the FLD could not be considered as FAN;

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55 Judicial Affidavit, Exhibit "R-16" and "R-16-A", id., pp. 266-270.

56 See Exhibits "R-12" and "R-12-A".

57 Exhibit "R-13".

58

Exhibit "**R-1**"	-	Letter of Authority No. LOA-008-2014-00000103 / SN:eLA201100072316 dated March 17, 2014 Letter of Authority;
Exhibit "**R-2**"	-	Letter dated March 18, 2014;
Exhibit "**R-3**"	-	First Notice for Presentation of Records dated April 7, 2014;
Exhibit "**R-4**"	-	Second and Final Request for Presentation of Records dated May 12, 2014;
Exhibit "**R-5**"	-	5-Day Notice Before Issuance of Duces Tecum dated July 30, 2014;
Exhibit "**R-6**"	-	Letter dated October 31, 2014;
Exhibit "**R-6-A**"	-	Details Discrepancies;
Exhibit "**R-7**"	-	Letter dated January 7, 2015;
Exhibit "**R-8**"	-	Letter dated June 19, 2015;
Exhibit "**R-9**"	-	Memorandum dated July 7, 2015;
Exhibit "**R-10**"	-	Letter dated July 21, 2015;
Exhibit "**R-11**"	-	Preliminary Assessment Notice (PAN) dated July 28, 2015 together with the Details of Discrepancies;
Exhibit "**R-12**"	-	Formal Letter of Demand (FLD) dated August 27, 2015 and Details of Discrepancies;
Exhibit "**R-12-A**"	-	Audit Result/Assessment Notice dated August 27, 2015;
Exhibit "**R-13**"	-	Registry Receipt Card;
Exhibit "**R-14**"	-	Folder 1 of the BIR Investigation Records;
Exhibit "**R-14-A**"	-	Folder 2 of the BIR Investigation Records;
Exhibit "**R-14-B**"	-	Folder 3 of the BIR Investigation Records;
Exhibit "**R-14-C**"	-	Folder 4 of the BIR Investigation Records; and,
Exhibit "**17**"	-	Registry Receipt of PAN.

59 Resolution dated 10 May 2019.

60 *Rollo*, Volume III, p. 1395 (Petitioner's Memorandum); pp. 1377-1393 (Respondent's Memorandum).

The FLD issued was also silent on the demand of payment and when should payments be made. Petitioner insisted that the issuance of a valid formal assessment is a substantive pre-requisite for collection of taxes. On the other hand, respondent maintained that this Court has no jurisdiction over the case since petitioner filed its appeal beyond the reglementary period of 30 days from receipt of the denial (of its protest). Petitioner filed this action on 16 December 2016 or 233 days beyond the 30-day period (from the lapse of the 180-day period to appeal before the court).[61] Assuming it has jurisdiction, petitioner should be barred from questioning the FLD for the first time on appeal. At any rate, the FLD issued to it was valid since the law does not require that it should contain the date of payment. Besides, the FLD was with assessment notice that contained the due date for the payment of the assessed deficiency tax.

ISSUE

As crafted and agreed on by the parties, the issue for this Court's resolution is as follows -

> WHETHER PETITIONER IS LIABLE TO PAY THE ASSESSED DEFICIENCY INCOME TAX, VALUE ADDED TAX AND EXPANDED WITHHOLDING TAX, AND IMPROPERLY ACCUMULATED EARNINGS TAX, PLUS SURCHARGE AND INTERESTS.

RULING OF THE COURT

The above issue, alongside respondent's insistence that petitioner's appeal period has lapsed and that this court failed to acquire jurisdiction over the petition, shall be discussed below, *in seriatim*.

THE ASSESSMENT HAS NOT BECOME FINAL AND EXECUTORY

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[61] Petitioner filed the appeal with the respondent on 22 February 2016, allegedly received on 03 February 2016. It had until 28 March 2016, the last day of the 180-day period to file protest.

In this case, the following are the pertinent dates in determining the timeliness of the Petition for Review:

Date	Action
September 15, 2015[62]	Petitioner received the FLD with Assessment Notices dated August 27, 2015[63]
September 30, 2015	Petitioner filed a protest letter addressed to the RD of Revenue Region No. 2- Baguio City[64]
January 18, 2016	Petitioner received a letter denial by RD stating that the Protest filed was found to be of no merit and that it upheld and sustained the validity of the original assessment dated January 4, 2016[65]
February 3, 2016	Petitioner filed a request for reconsideration dated February 2, 2016 before the Office of the Commissioner[66]
October 3, 2016[67]	Petitioner received the Preliminary Collection Letter (PCL) dated September 19, 2016[68]
October 11, 2016[69]	Petitioner received the Final Notice Before Seizure (FNBS) dated September 28, 2016[70]
November 18, 2016[71]	Petitioner received the Warrant of Distraint and/or Levy (WDL) dated October 26, 2016[72]
December 16, 2016	Petitioner filed Petition for Review

As a rule, the warrant of distraint and levy is proof of the finality of the assessment and renders hopeless a request for reconsideration, being a tantamount to an outright denial thereof and makes the said

62 Exhibit "R-13", BIR Records, p. 1377.
63 Exhibit "P-10", Volume II, pp. 1221-1223.
64 Exhibit "P-11", id., pp. 1224-1227.
65 Exhibit "P-18", id., p. 1237.
66 Exhibit "P-19", id., pp. 1238-1247.
67 Statement of the Facts and of the Case, No. 11, Volume III, p. 1398.
68 Exhibit "P-21", Volume II, p. 1263.
69 Statement of the Facts and of the Case, No. 11, Volume III, p. 1398.
70 Exhibit "P-22", Volume II, p. 1264.
71 Statement of the Facts and of the Case, No. 15, Volume III, p. 1398.
72 Exhibit "P-29", Volume II, p. 1283.

request deemed rejected.[73] From the foregoing, the 30-day period within which to file a Petition for Review with this Court should be reckoned from the petitioner's receipt of the WDL on November 18, 2016 or until **December 18, 2016**. Hence, when the appeal was filed on December 16, 2016, only 28 days of the reglementary period has been consumed. There is thus no merit in respondent's claim that petitioner's remedy of appeal has lapsed and that this court failed to acquire jurisdiction.

RESPONDENT'S FORMAL LETTER OF DEMAND IS NOT VALID.

On the other hand, central in petitioner's disagreement with the respondent's action against it is the supposed failure of the latter to observe the substantial and procedural requirements in the assessment and collection of taxes.

Understanding that taxes are lifeblood of the nation, tax authorities have been permitted ample discretion to avail themselves of the most expeditious way to collect the taxes, with as little interference as possible. However, there have been times when courts do not also hesitate to strike down these processes in cases wherein tax authorities disregarded due process. Thus, the power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law.[74] The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.[75]

To properly appreciate the procedure that respondent must undertake for his valid assessment, the Supreme Court highlighted the same in a case[76], thus:

> ...
>
> The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced

[73] *Commissioner of Internal Revenue v. Algue, Inc. et al.*, G.R. No. L-28896, 17 February 1988, 158 SCRA 13.

[74] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018.

[75] Id.

[76] *CIR v. Fitness by Design*, G.R. No. 215957, 09 November 2016.

by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.

After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.

The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement. Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment.

Section 3 of Revenue Regulations No. 12-99, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment, requires a notice for informal conference. The revenue officer who audited the taxpayer's records shall state in his or her report whether the taxpayer concurs with his or her findings of liability for deficiency taxes. If the taxpayer does not agree, based on the revenue officer's report, the taxpayer shall be informed in writing of the discrepancies in his or her payment of internal revenue taxes for "Informal Conference." The informal conference gives the taxpayer an opportunity to present his or her side of the case.

The taxpayer is given 15 days from receipt of the notice of informal conference to respond. If the taxpayer fails to respond, he or she will be considered in default. The revenue officer endorses the case with the least possible delay to the Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative. The Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative is responsible for the "appropriate review and issuance of a deficiency tax assessment, if warranted."

If, after the review conducted, there exists sufficient basis to assess the taxpayer with deficiency taxes, the officer 'shall issue a preliminary assessment notice showing in detail the facts, jurisprudence, and law on which the assessment is based. The

> taxpayer is given 15 days from receipt of the pre-assessment notice to respond. If the taxpayer fails to respond, he or she will be considered in default, and a formal letter of demand and assessment notice will be issued.
>
> The formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void. The taxpayer or the authorized representative may administratively protest the formal letter of demand and assessment notice within 30 days from receipt of the notice.
>
> ...

In addition, pursuant to Section 228[77] of the NIRC of 1997, as amended, aside from the thirty (30) days from receipt of the FAN within which to file an administrative protest, the taxpayer has another thirty (30) days from receipt of respondent's decision or from the lapse of one hundred eighty (180)-day period, in case of inaction, within which to file its judicial appeal with the Court.

From the foregoing, a notice of informal conference must be sent to herein petitioner. The Notice of Informal Conference is a written statement issued by the BIR informing the taxpayer of the discrepancies in the taxpayer's tax payments for the purpose of conducting an informal conference wherein the taxpayer will be given an opportunity to present his or her side of the case. The same should precede the issuance of the PAN. Here, respondent issued letters and memoranda to petitioner, requiring the production of relevant documents and providing it with the narrative details of its supposed deficiencies.[78] While the issuances were not strictly denominated to be Notice of Informal Conference, they nevertheless satisfy the intendment of the law and the requirements of due process.

Petitioner however insists that it did not receive any FAN but an FLD for its purported tax liabilities for taxable year 2012. In contrast, respondent contends that petitioner received the assessment notice[79], together with the FLD dated 27 August 2015, on 15 September 2015 (as evidenced by the Registry Return Receipt[80]). A scrutiny of the said

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77 Supra at note 10.
78 See Exhibits "R-2" to "R-8", BIR Records.
79 Exhibit "R-12-A", id., p. 1376.
80 Exhibit "R-13", id., p. 1377.

Registry Return Receipt does not indicate the letter/s or document/s delivered to petitioner.

In the case of *Barcelon, Roxas Securities, Inc. [now known as UBP Securities, Inc.] v. Commissioner of Internal Revenue*[81], the Supreme Court held that a direct denial of the receipt of the 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 testimony by way of a Judicial Affidavit, petitioner's treasurer, Benitez, directly denied the receipt of an assessment notice from the BIR; what she admitted was the receipt of the FLD dated August 27, 2015[82]. The direct denial makes it incumbent upon respondent to prove that the assessment notice which he claimed to have been mailed together with the FLD was indeed received by petitioner. Unfortunately, aside from not actually showing that it was the FLD that was sent to petitioner (and duly received by it), this registry receipt was also not properly authenticated. It is settled that receipts for registered letters and return receipts must be properly authenticated in order to serve as proof of receipt of the letters.[83]

ABSENCE OF DUE DATE ON THE FINAL ASSESSMENT NOTICE/FORMAL LETTER OF DEMAND INVALIDATES THE ASSESSMENT

Assuming *ex gratia argumenti* that the FLD similarly functions as the FAN, respondent's FLD is fatally defective because it did not contain any due date. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.* [84], the Supreme Court held:

> ...
>
> ...[T]he **Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**

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81 G.R. No. 157064, August 7, 2006, citing *Republic of the Philippines v. Court of Appeals and Nielson & Co., Inc.*, G.R. No. L-38540, 30 April 1987.

82 Exhibit "P-45", Volume II, pp. 843-853.

83 *Resterio v. People of the Philippines*, G.R. No. 177438, 24 September 2012, citing *Victor Ting "Seng Dee" et al. v. The Court of Appeals et al.*, G.R. No. 140665, 13 November 2000.

84 Supra at note 76.

> ...
> **The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the [NIRC] nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> ...
> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period'.**[85]
> ...

In the said immediately-cited case, the Supreme Court disallowed the assessment on the taxpayer on the basis of the FAN that did not contain any amount of the tax liability and the due date to settle the tax liability. It ruled, thusly:

> ...
> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.
> ...
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment... The last paragraph of the Final Assessment Notice states that the due

[85] Id.; emphasis supplied.

dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*

...

... The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[86]

...

In the case at bar, the FLD sent to petitioner reads-

...

In view hereof, you are requested to pay your aforesaid deficiency tax liabilities, through the duly authorized agent bank in which you are enrolled within the time shown.

We hope that you will give this matter your preferential attention.[87]

...

Regrettably, like in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, there was no time or date indicated on the FLD. Correspondingly, with BIR's substantial and procedural lapses, the inevitable conclusion is that the subject tax deficiency assessment against the petitioner for the taxable year 2012 is void and bears no valid fruit.[88]

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86 Id.

87 Id.; emphasis supplied.

88 *See Commissioner of Internal Revenue v. Reyes,* G.R. No. 159694, 27 January 2006.

In view of the finding that the subject deficiency tax assessment is invalid, the Court shall no longer discuss the correctness of the itemized list of tax deficiencies and the amounts indicated therein.

WHEREFORE, with the foregoing, the instant Petition for Review filed by petitioner Nationwide Health Services Baguio, Inc. is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's notices and assessments are declared **VOID** and henceforth **CANCELLED**. Consequently, the Warrant of Distraint and/or Levy dated 26 October 2016, covering the assessed deficiency tax liabilities against petitioner for taxable year 2012, in the aggregate amount of ₱5,846,348.16, is also **CANCELLED** and **SET ASIDE**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

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

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice