REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

****

10K SOUTH CONCRETE MIX SPECIALIST, INC., Petitioner,	**CTA Case No. 9730**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 18 2021 1:00 p.m.

x - x

DECISION

UY, *J.*:

Before this Court is the *Petition for Review (With Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax)*[1] filed on December 8, 2017 by petitioner, 10K South Concrete Mix Specialist, Inc., against respondent, Commissioner of Internal Revenue (CIR), praying that: (a) the assessment notice on the alleged deficiency income tax, value-added tax (VAT), final withholding tax, and compromise penalty in the aggregate amount of Forty Three Million Two Hundred Sixteen Thousand Ninety Three and 36/100 Pesos (₱43,216,093.36), inclusive of surcharge and interest, for taxable year 2013 be cancelled and set aside; (b) the Warrant of Garnishment dated November 2, 2017 be lifted; and (c) the collection of the alleged deficiency income tax, VAT, final withholding tax and compromise penalty be suspended.

---

[1] Docket – Vol. 1, pp. 10 to 27.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 3rd Floor, Aseana Power Station, Pres. Macapagal Blvd. Brgy. Tambo, Parañaque City.[2]

On the other hand, respondent is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, as the chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith. He may be served with summons, notices and other court processes at his office at BIR National Office Building, Diliman, Quezon City.[3]

THE FACTS

Petitioner is registered with the Securities and Exchange Commission on October 10, 2012 with Company Registration No. CS201218785 of even date.[4] It is also registered with the BIR with Certificate of Registration No. 9RC0000432936 and Tax Identification No. 008-391-885-000.[5]

Based on its Articles of Incorporation, petitioner was established primarily to engage in general construction business, including the constructing, enlarging, repairing, developing or engaging in any work upon buildings, houses and condominiums, roads, plants, bridges, airfields, piers, waterworks, railroads and other structures, and to engage in the business of providing or producing concrete mix, asphalt mix, including raw materials thereof.[6]

On September 30, 2014, respondent issued Letter of Authority No. LOA-052-2014-00000288 (SN: eLA201100078274) of even date, authorizing the examination of petitioner's books of accounts and

---

[2] *Joint Stipulation of Facts and Issues (JSFI)*, Summary of Admitted Facts, par. 1, Docket – Vol. 1, p. 341.
[3] *JSFI*, Summary of Admitted Facts, par. 9, Docket – Vol. 1, p. 342.
[4] *JSFI*, Summary of Admitted Facts, par. 2, Docket – Vol. 1, p. 341.
[5] *JSFI*, Summary of Admitted Facts, par. 4, Docket – Vol. 1, p. 342.
[6] *JSFI*, Summary of Admitted Facts, par. 3, Docket – Vol. 1, p. 341.

other accounting records for all internal revenue taxes for the period beginning from January 1, 2013 to December 31, 2013.[7]

On June 22, 2016, respondent issued a Preliminary Assessment Notice (PAN)[8] of even date, assessing petitioner for alleged deficiency income tax, VAT and final withholding tax, together with compromise penalty and interests for taxable year 2013.[9]

Within the 15-day period to file a reply to the PAN, petitioner filed its Reply to PAN[10] dated July 15, 2016, questioning the validity of the aforesaid assessment.[11]

Respondent claims that Assessment Notices and a Formal Assessment Notice (FAN) with Details of Discrepancies[12] assessing petitioner for alleged deficiency income tax, VAT and final withholding tax for taxable year 2013 were issued to petitioner on August 2, 2016,[13] detailed as follows:

Tax Type	Amount
Income Tax	₱24,487,932.62
VAT	17,870,968.89
Final Withholding Tax	842,001.85
Compromise Penalty	16,000.00
TOTAL	₱43,216,903.36

Thereafter, on November 17, 2017, petitioner received the following: (1) from the Bank of the Philippine Islands (BPI), a letter[14] dated November 10, 2017, informing petitioner that BPI received a Warrant of Garnishment[15] dated November 2, 2017; and (2) from Security Bank, a Warrant of Garnishment[16] dated November 2, 2017, which was received by Security Bank on November 9, 2017.

---

[7] *JSFI*, Summary of Admitted Facts, par. 5, Docket – Vol. 1, p. 342.
[8] Exhibit "P-4", Docket – Vol. 1, pp. 183 to 187.
[9] *JSFI*, Summary of Admitted Facts, par. 6, Docket – Vol. 1, p. 342.
[10] Exhibit "P-5", Docket – Vol. 1, p. 188.
[11] *JSFI*, Summary of Admitted Facts, par. 7, Docket – Vol. 1, p. 342.
[12] Exhibit "R-2", BIR Records, pp. 445 to 453.
[13] Respondent's *Memorandum (Application for Issuance of Preliminary Injunction/TRO)* filed on August 11, 2018, Docket, Vol. 1, pp. 434 to 437.
[14] Exhibit "P-1", Docket – Vol. 1, p. 157.
[15] Exhibit "P-1-A", Docket – Vol. 1, p. 133.
[16] Exhibit "P-2", Docket – Vol. 1, p. 132.

Aggrieved, petitioner filed the instant *Petition for Review (With Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax)*[17] on December 8, 2017. This case was initially assigned to the First Division of this Court.

The *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax* was set for hearing on January 18, 2018, and petitioner was directed to submit the *Judicial Affidavit/s* of its witness/es in support of said motion.[18] On January 15, 2018, petitioner filed a *Submission (with Attached Judicial Affidavit of Ma. Soledad I. Cunano),*[19] and a *Motion to Dispense with the Payment of the Bond.*[20]

In the *Order* dated February 1, 2018[21], the Court granted respondent's *Motion for Extension to File Answer*[22] filed on January 18, 2018, praying for an extension of thirty (30) days from January 26, 2018, or until February 25, 2018, to file his *Answer.*

On January 19, 2018, petitioner filed a *Submission (with Attached Supplemental Judicial Affidavit of Ma. Soledad I. Cunano).*[23]

During the hearing of petitioner's *Urgent Motion to Lift Garnishment and To Suspend Collection of Tax* and *Motion to Dispense with the Payment of the Bond* on January 18, 2018 and January 25, 2018, petitioner presented as witness its Accounting Head, Ma. Soledad I. Cunano (Soledad Cunano). She testified on direct examination by way of her *Judicial Affidavit*[24] and *Supplemental Judicial Affidavit,*[25] and she said that the garnishment and the collection of taxes jeopardized petitioner's interests; that the method employed by respondent in the collection of tax is not sanctioned by law and that prescription has set in insofar as the 1st and 2nd quarters of VAT and final withholding taxes for taxable year 2013 are concerned; and that petitioner is entitled to the grant of its *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax* and the *Motion to Dispense with the Payment of Bond.*

---

[17] Docket – Vol. 1, pp. 10 to 27.
[18] *Order* dated December 29, 2018, Docket – Vol. 1, pp. 49 to 50.
[19] Docket – Vol. 1, pp. 58 to 67.
[20] Docket – Vol. 1, pp. 107 to 110.
[21] *Order* dated February 1, 2018, Docket – Vol. 1, pp. 193 to 194.
[22] Docket – Vol. 1, pp. 147 to 148.
[23] Docket – Vol. 1, pp. 116 to 127.
[24] Exhibit "P-10", Docket, Vol. 1, pp. 58 to 67.
[25] Exhibit "P-9", Docket – Vol. 1, pp. 121 to 127.

On January 30, 2018, petitioner filed its *Formal Offer of Evidence* relative to its *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax*),[26] while respondent's *Comment to Petitioner's Formal Offer of Evidence*[27] was filed on January 31, 2018.

Thereafter, on February 24, 2018, respondent filed his *Answer*[28] via registered mail (and received by the Court on March 5, 2018), interposing special and affirmative defenses, which include, among others, the following, *to wit*:

1) That during the administrative investigation by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings shown under the Details of Discrepancies attached to the PAN and FAN;

2) That the falsities in petitioner's returns provide ample basis for the application of the 10-year prescriptive period;

3) That the PAN and FAN were served to petitioner through registered mail;

4) That the assessment issued against petitioner for deficiency income tax, VAT, expanded withholding tax, documentary stamp tax, improperly accumulated earnings tax, and compromise penalty for taxable year 2013 were made in accordance with law and regulations; and

5) Assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise.

In the *Resolution*[29] dated June 13, 2018, the Court admitted all of petitioner's exhibits except for Exhibit "P-3". Of even date, petitioner filed a *Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals*[30] together with the *Judicial Affidavit of Enrico T. Pizarro.*[31]

---

[26] Docket – Vol. 1, pp. 151 to 156.
[27] Docket – Vol. 1, pp. 195 to 196.
[28] Docket – Vol. 1, pp. 200 to 206.
[29] Docket – Vol. 1, pp. 302 to 304.
[30] Docket – Vol. 1, pp. 305 to 317.
[31] Exhibit "P-25", Docket – Vol. 1, pp. 309 to 317.

During the Pre-Trial Conference held on June 14, 2018, the parties agreed to submit their *Joint Stipulation of Facts and Issues* until June 29, 2018.[32]

On June 18, 2018, petitioner filed a *Motion for Reconsideration (with Motion to Set Commissioner's Hearing and Manifestation)*[33] praying that the Court set another Commissioner's Hearing to allow petitioner to correctly mark the Audited Financial Statements for fiscal years 2015 and 2016 as Exhibit "P-3"; reconsider the *Resolution* dated June 13, 2018 and admit Exhibit "P-3"; and note its manifestation relative to Exhibit "P-15". On June 20, 2018, respondent filed his *Comment (to the Motion for Reconsideration dated June 18, 2018).*[34]

Thereafter, the parties filed their *Joint Stipulation of Facts and Issues*[35] on June 28, 2018, which was approved in the *Resolution*[36] dated July 4, 2018.

Moreover, the Court granted petitioner's *Motion for Reconsideration* filed on June 18, 2018 and admitted Exhibit "P-3" in the *Resolution* dated July 26, 2018.[37]

On August 3, 2018, petitioner filed a *Motion for Leave to File Supplemental Judicial Affidavit (to the Judicial Affidavit of Ma. Soledad I. Cunano dated June 8, 2018)*[38] and a *Submission (with Attached Supplemental Judicial Affidavit of Ma. Soledad I. Cunano dated August 3, 2018),*[39] in order to allege occurrences and events that transpired since the filing of Soledad Cunano's *Judicial Affidavit*[40] dated June 8, 2018. The said *Motion* was granted by the Court in the *Order*[41] dated August 9, 2018.

Meanwhile, the Court issued the *Pre-Trial Order* dated August 6, 2018.[42]

---

[32] *Minutes of the Hearing* and *Order* dated June 14, 2018, Docket – Vol. 1, pp. 324 to 330.
[33] Docket – Vol. 1, pp. 331 to 337.
[34] Docket – Vol. 1, pp. 338 to 339.
[35] Docket – Vol. 1, pp. 341 to 346.
[36] Docket – Vol. 1, pp. 348 to 349.
[37] Docket – Vol. 1, pp. 365 to 366.
[38] Docket – Vol. 1, pp. 382 to 385.
[39] Docket – Vol. 1, pp. 386 to 401.
[40] Exhibit "P-26", Docket – Vol. 1, pp. 249 to 262.
[41] Docket – Vol. 1, pp. 432 to 433.
[42] Docket – Vol. 1, pp. 405 to 413.

Petitioner filed its *Memorandum*[43] on August 7, 2018, while respondent filed his *Memorandum (Application for Issuance of Preliminary Injunction/TRO)*[44] on August 11, 2018. Thus, petitioner's *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax* incorporated in its *Petition for Review* filed on December 8, 2017, and *Motion to Dispense with the Payment of the Bond* filed on January 15, 2018, were submitted for resolution on September 3, 2018.[45]

On September 24, 2018, the instant case was transferred to the Third Division[46] pursuant to CTA Administrative Circular No. 02-2018,[47] *"Reorganizing the Three (3) Divisions of the Court".*

In the *Resolution* dated October 24, 2018,[48] the Court granted petitioner's *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax*, and its *Motion to Dispense with the Payment of Bond* and ordered the lifting the Warrant of Garnishment dated November 2, 2017 pending the final disposition of the instant case; and the cash deposit or bond was dispensed with. Moreover, respondent was ordered to cease and desist from collecting the subject deficiency income tax, VAT, final withholding tax, and compromise penalty for the taxable year 2013 in the aggregate amount of ₱43,216,093.36, inclusive of surcharge and interest, until the final resolution of the instant case. The Court likewise granted petitioner's *Omnibus Motion for the Submission of Amended ICPA Report and for the Cancellation of Hearing on September 25, 2018.*

Thereafter, trial on the main case ensued. Petitioner recalled witness, Soledad Cunano, and presented as additional witness, Enrico T. Pizarro (Enrico Pizarro), the duly-commissioned Independent Certified Public Accountant (ICPA).[49]

On March 6, 2019, petitioner filed its *Formal Offer of Evidence*.[50] In the *Resolution*[51] dated May 27, 2019, the Court admitted petitioner's exhibits except for Exhibits "P-24-D", "P-52", "P-

---

[43] Docket – Vol. 1, pp. 414 to 430.
[44] Docket – Vol. 1, pp. 434 to 437.
[45] Docket – Vol. 1, p. 444.
[46] *Order* dated September 24, 2018, Docket – Vol. 2, pp. 595 to 596.
[47] Dated September 18, 2018.
[48] Docket – Vol. 2, pp. 598 to 611.
[49] Exhibit "P-25", Docket – Vol. 1, pp. 309 to 317.
[50] Docket – Vol. 2, pp. 678 to 700.
[51] Docket – Vol. 2, pp. 808 to 811.

55.1" to "P-55.6", "P-67.202", "P-67.403", "P-67.404", "P-67.320" and "P-67.321".

On June 10, 2019, petitioner filed an *Omnibus Motion for Reconsideration and Motion to Reopen Proceedings*[52] praying, among others, that the Court admit Exhibits "P-52", "P-52.144" to "P-52.413", "P-55.1" to "P-55.6", "P-67.202", "P-67.403" and "P-67.404". The Court partially granted said *Motion* on August 27, 2019; thus, setting the recall of petitioner's witness, ICPA Enrico Pizarro, on September 17, 2019.[53]

Thereafter, petitioner filed a *Supplemental Formal Offer of Evidence* on September 20, 2019.[54] On November 25, 2019, the Court issued the *Resolution*[55] admitting petitioner's Exhibits "P-52", "P-52.144" to "P-52.271", "P-52.275" to "P-52.260", "P-52.362" to "P-52.413", "P-55.1" to "P-55.6", "P-67.202", "P-67.403", "P-67.404", "P-72", "P-72-A", and "P-73", and denying Exhibits "P-52.272" to "P-52.272", for not being properly or completely scanned, and "P-52.361", for not being found in the records.

For his part, respondent presented a sole witness, Revenue Officer Eugene Valentine V. Berganio (RO Berganio).[56]

Thereafter, respondent filed his *Formal Offer of Evidence*[57] on December 17, 2019, while petitioner filed its *Comment (On Respondent's Formal Offer of Evidence Dated December 16, 2019)*[58] on December 20, 2019. On March 9, 2020, the Court issued the *Resolution*[59] admitting all of respondent's exhibits.

Considering the filing of petitioner's *Memorandum*[60] on July 16, 2020, without respondent's *Memorandum*,[61] the instant case was submitted for decision on December 21, 2020.[62]

[52] Docket – Vol. 2, pp. 816 to 827.
[53] *Resolution* dated August 27, 2019, Docket – Vol. 2, pp. 837 to 841.
[54] Docket – Vol. 2, pp. 873 to 879.
[55] Docket – Vol. 2, pp. 890 to 892.
[56] *Minutes of the Hearing* and *Order* dated December 5, 2019, Docket – Vol. 2, pp. 893 to 895; Exhibit "R-5", Docket – Vol. 2, pp. 652 to 657.
[57] Docket – Vol. 2, pp. 898 to 901.
[58] Docket – Vol. 2, pp. 917 to 920.
[59] Docket – Vol. 2, pp. 924 to 925.
[60] Docket – Vol. 2, pp. 926 to 968.
[61] Per *Records Verification Report* dated December 17, 2020, Docket – Vol. 2, p. 970.
[62] Docket – Vol. 2, p. 972.

Hence, this *Decision*.

THE ISSUES

The parties stipulated the following issues for the Court's resolution[63], *to wit*:

(a) Whether or not the Warrants of Garnishment dated November 2, 2017 issued by respondent and served upon Security Bank & Trust Co. and Bank of the Philippine Islands on November 9, 2017 and November 10, 2017, respectively, were void.

(b) Whether or not respondent's right to assess petitioner deficiency VAT for the first and second quarters of taxable year 2013 and deficiency final withholding tax for taxable year 2013 had already prescribed.

(c) Whether or not petitioner is liable for alleged deficiency income tax, VAT and final withholding tax for taxable year 2013 in the aggregate amount of ₱43,216,903.36.

Petitioner's arguments:

Petitioner argues that the assessments are void because it never received, either personally or through registered mail, the Formal Letter of Demand (FLD)/FAN allegedly issued and served by respondent. Petitioner asserts that respondent failed to prove that the FLD/FAN was, in fact, mailed to, and was received by, petitioner.

For failure of respondent to issue the FLD/FAN, petitioner claims that it was deprived of its right to be informed of the legal and factual bases of the assessment against it. Thus, the void assessments cannot be used as bases for the collection of taxes. Consequently, the Warrants of Garnishment dated November 2, 2017, having emanated from a void FLD/FAN, are likewise void.

Petitioner further argues that respondent failed to conduct the investigation within the 120-day period prescribed under the BIR General Audit Procedures and Documentation.

---

[63] *JSFI*, Statement of the Issues, Docket – Vol. 1, pp. 342 to 343.

Moreover, petitioner claims that respondent's right to assess petitioner for the alleged deficiency VAT for the 1st and 2nd quarters of taxable year 2013, and for final withholding taxes for taxable year 2013, had already prescribed. According to petitioner, no assessment was made within the period prescribed by law, summarized as follows:

Quarter	Date Required to be Filed	Date of Actual Filing	End of Prescriptive Period
1st	April 25, 2013	April 8, 2013	April 25, 2016
2nd	July 25, 2013	July 29, 2013	July 29, 2016

With respect to the assessment for final withholding tax, petitioner asserts that the prescriptive period shall be counted from the date the final withholding tax return is required to be filed or on the date of actual filing, whichever is later. The final withholding tax return shall be filed within ten (10) days after the end of each month. Thus, respondent's right to assess petitioner for final withholding taxes withheld had already prescribed.

Allegedly, respondent failed to prove that there was fraud which would warrant the application of the ten (10)-year prescriptive period.

Finally, petitioner asserts that it is not liable for the alleged deficiency income tax, VAT, final withholding taxes, and compromise penalty, as well as the corresponding surcharge and interest, on the ground that said assessments lack factual and legal bases.

Respondent's counter-arguments:

Respondent counter-argues that petitioner was assessed for deficiency income tax, VAT, final withholding tax, and compromise penalty for taxable year 2013 due to the latter's failure to substantiate and submit supporting evidence against the BIR findings shown under the Details of Discrepancies attached to the PAN and FAN during the administrative investigation.

Moreover, respondent contends that the falsities in petitioner's returns provide ample basis for the application of the 10-year prescriptive period.

As regards to the PAN and FAN, respondent claims that these were served to petitioner through registered mail, and that the assessment issued against petitioner for deficiency income tax, VAT, expanded withholding tax, documentary stamp tax, improperly accumulated earnings tax, and compromise penalty for taxable year 2013 were made in accordance with law and regulations.

Finally, respondent argues that assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise. Respondent stresses that in the absence of proof showing that there were irregularities in the performance of respondent's duties, the assessment should not be disturbed.

THE COURT'S RULING

In the interest of orderly disposition of the instant case, the Court shall first resolve the *third issue* on whether or not petitioner is liable for the alleged deficiency taxes. To be specific, it is crucial to first determine whether the FLD/FAN was validly served and actually received by petitioner.

Respondent failed to prove that the FLD/FAN was mailed to, and received by, petitioner.

Petitioner stresses that it never received, either personally or through registered mail, the FLD/FAN.

On the other hand, respondent contends that the PAN and FAN were served to petitioner through registered mail.

We find for petitioner.

Section 228 of the National Internal Revenue Code of 1997 (NIRC), as amended, provides the procedure in the issuance of tax deficiency assessment, *to wit*:

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

M

xxx xxx xxx

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

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

Relative thereto, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, specifies the due process requirement in the issuance of a deficiency tax assessment, to wit:

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

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

xxx xxx xxx

3.1.3 *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*** (see illustration in ANNEX "B" hereof)." *(Emphasis supplied)*

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,[64] the Supreme Court reiterated the mandatory nature of issuing an FLD/FAN, *to wit*:

"Indeed, Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. **Otherwise, the assessment is void.** To implement the aforesaid provision, Revenue Regulations No. 12-99 was enacted by the BIR, of which Section 3.1.4 thereof reads:

[64] G.R. No. 197515, July 2, 2014.

xxx xxx xxx

> It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. **The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.**" *(Emphasis supplied)*

Clearly from the foregoing, an FLD and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicate the mandatory nature of the requirements laid down therein.[65] Verily, it is mandatory for the CIR or his duly authorized representative to demonstrate that the FLD/FAN was issued to, and was received by, the taxpayer.

We cannot stress enough the importance of issuing an FLD/FAN as part of a taxpayer's right to due process in tax assessments. The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[66] Hence, any assessment issued in violation of Section 228 of the NIRC, as amended, and RR No. 12-99, as amended, is void.

In the instant case, petitioner stresses that it never received, either personally or through registered mail, the FLD/FAN. On the other hand, respondent submits that the PAN and FAN were served to petitioner through registered mail.

As a general rule, a mailed letter is deemed received by the addressee in the ordinary course of mail. However, this is merely a disputable presumption, subject to controversion. If the taxpayer denies receipt of an assessment from the BIR, the latter has to prove that such assessment was indeed received by the former, as held by

---

[65] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014.

[66] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

the Supreme Court in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*,[67] *to wit*:

> "As can be gleaned from the above provisions, **service of the PAN or the FAN to the taxpayer may be made by registered mail**. Under Section 3(v), Rule 131 of the Rules of Court, **there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, <u>the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee</u>**.
>
> **In view of <u>respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative</u>.**" *(Emphasis and underscoring supplied)*

In the instant case, petitioner denies having received the FLD/FAN, either personally or through registered mail. This was confirmed by petitioner's witness, Soledad Cunano in her *Judicial Affidavit*[68] dated January 15, 2018, the pertinent portions of which provide:

"24. Q: You mentioned earlier that you are testifying to support the motion to dispense with the bond. Why is this so?

A: The assessment was not done properly. Also, insofar as the Value Added Tax for the 1st and 2nd Quarters of taxable year 2013, and the final withholding tax for the taxable year 2013 are concerned, the same have already prescribed.

25. Q: What do you said the assessment was not done properly?

A: The Petitioner **never received a Formal Letter of Demand or a Final Assessment Notice allegedly served by Respondent**.

We only received a Preliminary Assessment Notice last July 1, 2016, which we timely replied

---

[67] G.R. No. 240729, August 24, 2020.
[68] Exhibit "P-10", Docket – Vol. 1, pp. 58 to 67.

to on July 15, 2016. There was no action on the reply for months.

This is why on November 22, 2016, we sent a letter addressed to Mr. Jonas DP Amora, that the Petitioner already filed a Reply to the PAN and to follow up on the status of the case.

To our surprise, on November 17. 2017, we received a letter from BPI, informing the Company that BPI received a Warrant of Garnishment on November 10, 2017.
Also, on November 17, 2017, we received a Warrant of Garnishment from Security Bank which they received on November 9, 2017."

The foregoing was reiterated by Soledad Cunano during her cross-examination by Atty. William B. Dekit, as follows:[69]

"ATTY. DEKIT

Q: Ms. Cunano, I am showing to you this letter dated August 18, 2016, signed by Mr. Jonas Ricamora,[70] informing petitioner that BIR acknowledged petitioner's reply dated July 15, 2016 as well as **informing petitioner that there was already a Formal Notice issued to the petitioner. Did you receive this document?**

A: **No, We did not receive this document.**" *(Emphasis supplied)*

Considering the foregoing testimony of petitioner's witness, Soledad Cunano denying receipt of the FLD/FAN, the burden has shifted to respondent to prove that the FLD/FAN was mailed to, and was received by, petitioner. However, as will be discussed below, respondent failed to discharge said burden.

In his *Judicial Affidavit*,[71] RO Berganio claims that the assessment notices and FAN with Details of Discrepancy were mailed to petitioner's registered address. To prove the fact of mailing,

---

[69] Transcript of Stenographic Notes (TSN) during the hearing held on August 9, 2018, p. 15.
[70] Refers to "Jonas DP. Amora", and not "Jonas Ricamora", as indicated in Question No. 10 of Ma. Soledad I. Cunano's *Judicial Affidavit* dated June 8, 2018, Exhibit "P-26", Docket – Vol. 1, pp. 249 to 262.
[71] Exhibit "R-5", Docket – Vol. 2, pp. 652 to 657.

he presented the Record of Cases of the Administrative Division[72] of the BIR, and Certification dated August 23, 2018 issued by the Postmaster of Parañaque Central Post Office (Postmaster Certification).[73]

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*[74] the Supreme Court stated that in order to prove the fact of mailing, one must present the Registry Receipt or Registry Return Card which had been signed by the taxpayer or its authorized representative, *to wit*:

> **"To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. <u>The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing.</u>** While it is true that an assessment is made when the notice is sent within the prescribed period, **<u>the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice</u>**. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis and underscoring supplied)*

As stated in the *GJM Philippines* case, not much credence may be placed on self-serving documentations made by the BIR personnel, which, in this case, is the Record of Cases of the Administrative Division.[75] Moreover, a perusal of the Record of Cases of the Administrative Division, specifically Row 4 of the same, merely indicates the following:

---

[72] Exhibit "R-3", BIR Records, p. 454.
[73] Exhibit "R-4", Docket – Vol. 2, p. 902.
[74] G.R. No. 202695, February 29, 2016.
[75] Exhibit "R-3", BIR Records, p. 454.

AUGUST 2, 2016 BIR (REGISTERED)

NO.	POD/REG NO.	SENDER	SENDER ADDRESS	ADDRESSEE	ADDRESS	AMOUNT
4	AC266119995ZZ	BIR ASSESS-MENT DIV	BIR BLDG. 313 SEN GIL PUYAT AVE., MAKATI CITY	10K SOUTH CONCRETE MIX SPECIALIST INC.	PRES MACAPAGAL BLVD 3F ASEANA POWER STATION TAMBO PARANAQUE CITY METRO MANILA	Ref. No. 3 : 73

While the foregoing states that a certain document with Registry Receipt No. AC266119995ZZ was mailed on August 2, 2016 to petitioner at its registered address, **there is no indication that the document mailed was the FLD/FAN.**

In fact, respondent's witness, RO Berganio, admitted during his cross-examination by Atty. Mabel L. Buted (Atty. Buted) that Row 4 of the Record of Cases did not mention that the document mailed to petitioner was the FLD/FAN, as follows:[76]

"ATTY. BUTED

Q In Question No. 18, in your answer to Question No. 19 of your Judicial Affidavit, you said that the Assessment Notices and the FAN with details of discrepancies dated August 2, 2016 were mailed to the registered address of petitioner, correct?

REVENUE OFFICER BERGANIO

A Yes.

ATTY BUTED

Okay. So in your answer to Question 20 of your Judicial Affidavit, you said that these were mailed to the petitioner's registered address based on the record of cases of the Administrative Division of the BIR and I am showing to you the said record of cases of the Administrative Division of the BIR marked as Exhibit R-3.

Q Where in the said record does it indicate that the documents were mailed to the petitioner's registered address?

---

[76] TSN during the hearing held on December 5, 2019, pp. 10 to 13.

REVENUE OFFICER BERGANIO

A Where in this record?

ATTY. BUTED

Q Where in Exhibit R-3 does it indicate that the documents were mailed to the petitioner's registered address?

REVENUE OFFICER BERGANIO

A This is the address assumed on the record.

ATTY. BUTED

Q Okay. So it's in Row No. 4, right?

REVENUE OFFICER BERGANIO

A Yes.

ATTY. BUTED

Q Okay. In Row No. 4 of Exhibit R-3, can you please read to this Honorable Court the exact details contained in Row No. 4? The exact details of the columns under Row No. 4.

REVENUE OFFICER BERGANIO

A The first column is the registered number.

ATTY. BUTED

Q Okay. How about the second column?

REVENUE OFFICER BERGANIO

A BIR sender.

ATTY. BUTED

Q Okay. The third column?

REVENUE OFFICER BERGANIO

A Sender address.

ATTY. BUTED

Q Okay. And the fourth column?

REVENUE OFFICER BERGANIO

A Addressee 10K South Concrete.

ATTY. BUTED

Okay, the name of the petitioner.

Q And the fifth column?

REVENUE OFFICER BERGANIO

A The address as stated in this record.

ATTY. BUTED

Q Okay. How about the sixth column? The sixth and the last column?

REVENUE OFFICER BERGANIO

A The amount but the description here is the reference number.

ATTY. BUTED

Thank you, Mr. Witness.

Q Will you agree to me if I say that **there is no mention in the record of the Assessment Notices and the FAN? It does not indicate?**

REVENUE OFFICER BERGANIO

A **Well, based on this piece of paper, there is none.**" *(Emphasis supplied)*

The Supreme Court in the *GJM Philippines* case stated that if the Registry Receipt or the Registry Return Card could not be located, the CIR should have, at the very least, submitted a certification issued by the Bureau of Posts [now the Philippine Postal Corporation (PHLPOST)] and any other pertinent document executed with its intervention.

While respondent was able to present the Postmaster Certification, a perusal of the same reveals that what is stated is that "Reg Letter No. AC 266 119 995 zz addressed to 10 K South Concrete Mix Specialist Inc. with address at Pres. Macapagal Blvd. 3F Aseana Power Station, Tambo Parañaque City was delivered by **LC Michael Torres and was received by Camille Biong on October 5, 2016.**"

Similar to the Court's findings in the Record of Cases of the Administrative Division, the Postmaster Certification **did not mention that the document delivered by LC Michael Torres, and received by Camille Biong, was the FLD/FAN**.

Again, RO Berganio admitted during his cross-examination by Atty. Buted that the Postmaster Certification did not state that the document mailed to petitioner was the FLD/FAN, as follows:[77]

> "ATTY. BUTED
>
> Okay. Thank you, Mr. Witness. In your answer to Question 22 of your Judicial Affidavit, you said that the Assessment Notices and the FAN were received by the petitioner on October 5, 2016 in the person of Camille Biong based on a certification dated August 23, 2018 issued by the Post Master of Parañaque Central Post Office.
>
> Q So the certification dated August 23, 2018 marked as Exhibit R-4, can you please read to this Honorable Court the first paragraph of the said certification? The exact wordings of the first paragraph.
>
> REVENUE OFFICER BERGANIO
>
> A The letter certification came from Parañaque Central Post Office.
>
> ATTY. BUTED
>
> Okay.
>
> REVENUE OFFICER BERGANIO
>
> It says here "To whom it may concern: This is to certify that based on the records of this office, registered letter number AC266119995zz addressed to 10K South Concrete

---

[77] TSN during the hearing held on December 5, 2019, pp. 13 to 14.

> Mix Specialist, Inc., with address at President Macapagal Blvd. 3F Aseana Tower Station, Tambo, Parañaque City was delivered by LC Michael Torres* and was received by Camille Biong on October 5, 2016." Okay.
>
> ATTY. BUTED
>
> Thank you, Mr. Witness.
>
> Q Based on this, would you agree to me if I say that **there is no mention in the certification of the Assessment Notices and the FAN? There is no mention here of the exact wordings?**
>
> REVENUE OFFICER BERGANIO
>
> A **In that certification, the letter is silent about the assessment notice.**" *(Emphasis supplied)*

From the foregoing, it is clear that the documents submitted by respondent – the Record of Cases of the Administrative Division and Postmaster Certification – do not prove that the document which was mailed to petitioner was the FLD/FAN.

Considering that respondent failed to present the Registry Receipt issued by PHLPOST or the Registry Return Card signed by petitioner or its authorized representative, and that the Postmaster Certification failed to prove that what was mailed to petitioner was the FLD/FAN, respondent failed to discharge the burden of proving the fact of mailing of the FLD/FAN.

Likewise, respondent was not able to prove that the FLD/FAN was received by petitioner. Even assuming that Camille Biong received the document – which respondent claims is the FLD/FAN – as stated in the Postmaster Certification, respondent failed to prove that Camille Biong is an authorized representative of petitioner. The fact of mailing is different from the fact of receipt by petitioner's authorized representative.

In RO Berganio's cross-examination by Atty. Buted, it was established that RO Berganio was not aware who Camille Biong was, as follows:[78]

---

[78] TSN during the hearing held on December 5, 2019, p. 14.

"ATTY. BUTED

Thank you, Mr. Witness.

Q **Would you happen to know who is Camille Biong** who is indicated, mentioned in the certification?

REVENUE OFFICER BERGANIO

A **I cannot identify Camille Biong** because it's no longer my job to execute the step in the delivery of the Assessment Notice. It is the Administrative Division." *(Emphasis supplied)*

Taking into consideration the foregoing, the Court finds that respondent failed to present any competent evidence to prove the fact of mailing to, and actual receipt by, petitioner of the FLD/FAN.

Time and again, the Court has emphasized that strict compliance with the due process requirements is necessary for a valid tax assessment. While taxes are the lifeblood of government and should be collected without unnecessary hindrance, the collection of taxes should be exercised reasonably and in accordance with the prescribed procedure.[79]

Accordingly, for having failed to comply with the due process requirements set forth in Section 288 of the NIRC, as amended, and RR No. 12-99, as amended, the assessment issued by respondent against petitioner in the instant case is void.

Respondent's right to assess petitioner for the alleged deficiency taxes had already prescribed.

Considering that petitioner never received the FLD/FAN, respondent may no longer assess petitioner for the alleged deficiency taxes for taxable year 2013 as respondent's right to do so had already prescribed.

[79] *Commissioner of Internal Revenue v. Algue, Inc. and The Court of Tax Appeals*, G.R. No. L-28896, February 17, 1988.

Sections 203 and 223 of the NIRC of 1997, as amended, provides for the prescriptive periods for the assessment of internal revenue taxes, *to wit*:

> "SECTION 203. *Period of Limitation Upon Assessment and Collection*. — Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> SECTION 223. *Suspension of Running of Statute of Limitations*. — The **running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment** and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, **shall be suspended for the period during which the Commissioner is prohibited from making the assessment** or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed** upon which a tax is being assessed or collected: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; **when the warrant of distraint or levy is duly served upon the taxpayer**, his authorized representative, or a member of his household with sufficient discretion, and **no property could be located**; and when the **taxpayer is out of the Philippines**." *(Emphasis and underscoring supplied)*

The pertinent provisions of the NIRC of 1997, as amended, show that the BIR is given a period of three (3) years to assess internal revenue taxes, which is reckoned from the last day prescribed by law for the filing of the tax return or the actual date of filing thereof, whichever comes later. The assessment contemplated in the aforementioned provisions is the service of the FAN upon the taxpayer, as elucidated by the Supreme Court in *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[80] as follows:

---

[80] G.R. No. 227544, November 22, 2017.

"Finally, petitioner's contention that the assessment required to be issued within the three (3)-year or extended period provided in Sections 203 and 222 of the National Internal Revenue Code refers to the PAN is untenable.

Considering the functions and effects of a PAN *vis a vis* a FAN, **it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the <u>service of the FAN upon the taxpayer</u>**." *(Emphasis and underscoring supplied)*

The exception to the three (3)-year period to assess taxes is laid down under Section 222 of the NIRC of 1997, as amended, as follows:

"SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false or fraudulent return with intent to evade tax or of 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.

xxx xxx xxx"

In the instant case, there is no merit in respondent's assertion that the falsities in petitioner's returns provide ample basis for the application of the 10-year prescriptive period.

In *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*,[81] the Supreme Court held that in the absence of fraud or intentional falsity, Section 203 of the NIRC of 1997, as amended, should apply, *to wit*:

"Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. In *CIR v. B.F. Goodrich Phils., Inc.*, the Court stated that the **entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false**

---

[81] G.R. No. 213943, March 22, 2017.

> **return. In this case, we do not find enough evidence to prove fraud or intentional falsity on the part of PDL.**
>
> Since the case does not fall under the exceptions, Section 203 of the NIRC should apply xxx xxx xxx." *(Emphasis supplied)*

In the instant case, other than respondent's bare assertion that there were falsities in petitioner's returns, there is no showing that there was intentional falsity on the part of petitioner when it filed its returns. Thus, the three (3)-year prescriptive period is applicable in this case.

Moreover, none of the grounds which would suspend the running of the Statute of Limitations under Section 223 of the NIRC of 1997, as amended, are present in the instant case.

The running of the Statute of Limitations under Section 223 of the NIRC of 1997, as amended, is suspended if any of the following grounds are present:

a. When the Commissioner is prohibited from making the assessment, or beginning distraint, or levy or proceeding in court and for sixty (60) days thereafter;

b. When the taxpayer requests for a reinvestigation which is granted by the Commissioner;
c. When the taxpayer cannot be located in the address given by him in the return filed upon which the tax is being assessed or collected;

d. When the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and

e. When the taxpayer is out of the Philippines.

Here, there is no showing that respondent was prohibited from making an assessment; that petitioner could not be located; or that petitioner is out of the Philippines. In addition, petitioner could not have requested for a reinvestigation considering that petitioner never received the FAN. As such, the three (3)-year prescriptive period to assess petitioner was not suspended.

Given that the taxable year in question is 2013 and petitioner never received the FAN within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing thereof, whichever comes later, and in fact, even to date, since **petitioner never received the FAN at all**, petitioner can no longer be assessed for its alleged deficiency taxes because respondent's right to do so had already prescribed.

A void assessment bears no valid fruit, hence the Warrants of Garnishment issued by respondent are void.

Anent the validity of the Warrants of Garnishment dated November 2, 2017 issued by respondent, the Court finds the same invalid.

The case of *Commissioner of Internal Revenue v. Azucena T. Reyes*[82] and *Azucena T. Reyes v. Commissioner of Internal Revenue*[83] wherein the Supreme Court held that a void assessment bears no valid fruit, is instructive, *to wit*:

> "*Fourth*, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit**.
>
> The law imposes a substantive, not merely a formal, requirement. **To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.** In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.** The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery." *(Emphasis supplied)*

---

[82] G.R. No. 159694, January 27, 2006.
[83] G.R. No. 163581, January 27, 2006.

As previously discussed, respondent failed to prove the fact of mailing to, and actual receipt by, petitioner of the FLD/FAN; thus, rendering the assessment void. Corollary thereto, respondent failed to assess petitioner for alleged deficiency taxes within the three (3)-year prescriptive period. Consequently, the Warrants of Garnishment, having emanated from a void assessment, are likewise void.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Assessment Notice and Assessment Notices all dated August 2, 2016 are hereby **CANCELLED** and **SET ASIDE**, and the Warrant of Garnishment No. WG-RR8-2017-09-0637-09 addressed to Security Bank and Trust Company, and Warrant of Garnishment No. WG-RR8-2017-09-0637-06 addressed to BPI, both dated November 2, 2017, are hereby declared **NULL** and **VOID**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice