**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

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| **MA. ERLINDA T. ONG, doing business under the name and style, 'Maranatha Sales Distributor', duly represented herein by her Attorney-in-Fact, Ms. Ria A. Sablon,** Petitioner, | **CTA CASE NO. 10444** Members: |
| - versus - | **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* |
| **THE COMMISSIONER OF INTERNAL REVENUE (CIR), BUREAU OF INTERNAL REVENUE (BIR),** Respondent. | Promulgated: DEC 1 0 2024 2:55 p.m. |

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# RESOLUTION

***FERRER-FLORES, J.:***

For resolution is respondent's **Motion for Reconsideration (Re: Decision promulgated on 13 June 2024)** filed on July 1, 2024, without petitioner's comment as per Records Verification Report dated September 20, 2024.

On June 13, 2024, the Court promulgated a Decision cancelling respondent's deficiency income tax, percentage tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) assessments against petitioner, for violating the latter's right to due process of law by failing to prove service and actual receipt of the Preliminary Assessment Notice (PAN), the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
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> Accordingly, the assailed Decision dated May 29, 2020 of respondent is **REVERSED** and **SET ASIDE**. Moreover, the Formal Letter of Demand with *Details of Discrepancies*, and *Assessment*

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

In his *Motion*, respondent prays that the above Decision be reversed and set aside based on the following grounds, *viz.*:

I. The Court erred in ruling that it has jurisdiction over the instant case;

II. Without admitting the Court's jurisdiction, the Court erred when it ruled that petitioner's right to due process was violated; and,

III. The Court erred in enjoining respondent from collecting the assessed deficiency taxes.

As to the first ground, respondent insists that the deficiency tax assessments against petitioner are already final, executory, and demandable. Respondent asserts that the *Petition for Review* was filed beyond the 30-day period provided by law within which to elevate its judicial appeal to the Court from receipt of the Preliminary Collection Letter (PCL) on July 20, 2018, which in this case was deemed equivalent to a Final Decision on Disputed Assessment (FDDA). Respondent continues that the said 30-day period within which to appeal ended on August 19, 2018, but the *Petition for Review* was only filed on January 6, 2021, thereby making the assessment final, executory and demandable, and the Court cannot anymore exercise jurisdiction over the same.

With regard to the second ground, respondent insists that petitioner was never deprived of its right to due process of law considering that reply to the PAN is merely an optional and not a mandatory requirement. Respondent contends that petitioner was duly served with the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) on December 29, 2015, and was able to file its protest thereto on January 25, 2016, stating its defenses to the deficiency taxes. As such, respondent asserts that petitioner was duly informed of the facts and the law upon which the assessments were made and was given the opportunity to be heard and present its defenses.

Lastly, as to the third ground, respondent submits that all presumptions are in favor of the correctness of tax assessment. Respondent avers that the Court erroneously enjoined respondent from collecting the assessed deficiency taxes considering that the *assailed* Decision has not yet attained finality and can still be appealed to the Supreme Court for the final pronouncement on the invalidity of the assessment. Absent such final pronouncement, respondent points out that petitioner may opt to request for the issuance of a temporary restraining order or injunction from the Court; however, there is no showing of an extreme urgency necessitating the issuance of a suspension order to prevent serious damage to petitioner since it is respondent who stands to suffer great damage and injury should a suspension order be issued.

The Court finds respondent's *Motion* bereft of merit.

At the outset, the grounds raised by respondent herein are mere restatements of the matters in his previous arguments, and all of which have already been considered and resolved by the Court in the assailed Decision. Nevertheless, the Court shall briefly reiterate the salient points upon which the conclusions reached in the assailed Decision were anchored.

The Court cannot subscribe to respondent's asseveration that the 30-day period within which to file a Petition for Review before this Court should be reckoned from petitioner's receipt of the PCL, which is considered his decision on the disputed assessment.

Respondent's Decision dated May 29, 2020 on petitioner's administrative appeal against the collection proceedings is not the traditional appeal from an FDDA, still, the same is still cognizable by this Court, since it involves a matter which arose out of the NIRC of 1997, as amended. The issue resolved in the assailed Decision sprung from petitioner's initiative to put to a halt the tax collection efforts being exerted by the BIR's Revenue Region No. 10. Thus, it can be gathered that what is being assailed by petitioner is the power and duty of the BIR to collect national internal revenue taxes as recognized under Sections 2[1] and 205[2] of the NIRC of 1997, as amended, and pursuant to the second paragraph of Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, which provides:

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

Based on the foregoing, the jurisdiction of this Court is not limited to cases which only involve decisions of the Commissioner of Internal Revenue (CIR), but also covers *other matters* arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other related laws administered by the BIR.[3] In the case of *Commissioner of Internal Revenue v. Court of Tax Appeals, et al.*,[4] the Supreme Court elaborated as to what comprises the phrase "other matters arising under this Code", as follows:

> As the CIR aptly pointed out, the phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, **should be understood as pertaining to those matters <u>directly related</u> to the preceding phrase 'disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto'** and must therefore not be taken in isolation to invoke the

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[1] SEC. 2. Powers and Duties of the Bureau of Internal Revenue. - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

[2] SEC. 205. Remedies for the Collection of Delinquent Taxes. -The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

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

(b) By civil or criminal action

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distrain and levy shall not be availed of where the amount of tax involved is not more than one hundred pesos (₱100).

x x x.

[3] Section 7(a)(1) of Republic Act (RA) No. 1125, as amended.

[4] G.R. No. 207843, July 15, 2015.

> jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers. *(Emphasis and underscoring supplied)*

Accordingly, the Court is clothed with jurisdiction to rule on the matter pursuant to the phrase "other matters arising under the NIRC of 1997, as amended, or other laws administered by the BIR".

Considering that petitioner received the Decision dated May 29, 2020 relative to the collection proceedings initiated by respondent on December 7, 2020, the filing of the *Petition for Review* on January 6, 2021 was timely made.

As to respondent's argument that petitioner has always been accorded due process from the commencement of the audit proceedings up to the issuance of the FLD/FAN and the Decision denying its protest, the Court holds otherwise.

With emphasis, the importance of providing the taxpayer with adequate written notice of its tax liability is undeniable. Under Section 228 of the NIRC of 1997, as amended, it is explicitly required that *the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.* The use of the word "shall" in the said Section and in its implementing rules and regulations indicate that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him or her is mandatory.[5] This essential requirement of due process applies to all assessment notices including the PAN.

Equally important to note is the oft-repeated principle that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with.[6] If the taxpayer denies receiving the assessment notice, the BIR must prove that the same was actually received by the taxpayer, and, correspondingly, the failure of the BIR to prove receipt of the assessment notice by the taxpayer leads to the conclusion that no assessment was issued.

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[5] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. Nos. 215534 & 215557, April 18, 2016.

[6] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[7]

Perforce, basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies it, since, by the nature of things, he who denies a fact cannot produce any proof of it.[8] Considering that it is respondent who asserts that the PAN was sent to petitioner through registered mail, he therefore bears the burden of proving the same.

Herein, respondent merely asserted that the PAN were mailed and presumed to have been received by petitioner. Unfortunately, however, mere assertion is not enough. It is essential to prove the fact of mailing *via* the Registry Receipt issued by the Bureau of Posts or the Registry Return card signed by petitioner or its duly authorized representative; and, if the said documents cannot be located, respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.[9]

Having failed to properly serve the PAN, it necessarily follows that the succeeding assessment notices such as the FAN are void and without effect. Correspondingly, the fact that petitioner was able to protest the FAN did not cure the violation of petitioner's right to due process.[10] The service of PAN is a substantive requirement, not merely formal one, and a failure to strictly comply with such requirement results in the voiding of the assessment.[11]

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7 *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

8 *MOF Company Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009; *Morales v. Skills International Company*, G.R. No. 149285, August 30, 2006.

9 *MOF Company Inc. v. Shin Yang Brokerage Corporation, G.R. No. 172822, December 18, 2009; Morales v. Skills International Company, G.R. No. 149285, August 30, 2006.*

10 *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.

11 See *Commissioner of Internal Revenue v. Azucena T. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006; *Commissioner of Internal Revenue v. Metro Star Superama*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue v. Next Mobile Inc.*, G.R. No. 232055 (Notice), April 27, 2022.

Finally, as to respondent's contention that it was erroneous for the Court to enjoin him from enforcing collection of the deficiency taxes considering that the Court's Decision has not yet attained finality and can still be appealed to the Supreme Court, the Court finds the same untenable.

With emphasis, the assailed Decision found that petitioner was able to prove that the subject tax assessments are void for respondent's violation of its right to due process, particularly, the failure to validly serve the PAN; which consequently led to the nullification of the deficiency assessments which precludes the said assessments from becoming final and enforceable.

In numerous cases,[12] the Supreme Court stressed that no collection can be made without the presence of a valid assessment. This requirement is substantial, not merely formal. This is because an assessment is required by law, and any collection effort must be done in accordance with the law, especially those instituted precisely to govern and limit the performance of said collection.

While the Court is not unaware that it has been repeatedly observed, and not without merit, that the enforcement of tax laws and the collection of taxes, is of paramount importance for the sustenance of government – taxes are the lifeblood of the government and should be collected without unnecessary hindrance– however, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.[13]

In this regard, any collection by respondent that contradicts the law, such as a collection based on a void assessment, contradicts the purpose of the Government itself. Idealistic, to be sure, but the reasoning used is clear: taxes are collected by respondent primarily to "promote the common good." Accordingly, if respondent were to collect the disputed amount, which is

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12 See *People of the Philippines v. Italcar Pilipinas, Inc., et al.*, G.R. No. 222280 [Notice], January 18, 2023; *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023; *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022; *Commissioner of Internal Revenue v. Metro Star Superama*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue v. Azucena T. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006; *Ferdinand R. Marcos II v. Court of Appeals, et al.,*, G.R. No. 120880, June 5, 1997.

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

based on a void assessment, he would be acting counter to "the common good" and "the very reason for government itself."

Lastly, in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,*[14] the Supreme Court reiterated that any collection of tax must be done pursuant to a valid assessment and that the Courts can prevent the collection of tax by authorities who have disregarded due process:

> Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, **including summary processes**, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's 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. **The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure**.
>
> In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. xxx It is **a step preliminary, but essential** to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' The BIR may summarily enforce collection only when it has accorded the taxpayer **administrative due process**, which vitally includes the issuance of a valid assessment. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf. *(Citations omitted)*

At this juncture, it is almost trite to say that a void assessment bears no fruit and cannot attain finality. Hence, it cannot be the basis of collection of deficiency tax assessment.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or amend the Decision promulgated on June 13, 2024.

**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated on 13 June 2024) is **DENIED** for lack of merit.

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[14] G.R. No. 197945, July 9, 2018.

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

We Concur:

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

(On Leave)
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice