REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

BARRIO FIESTA MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9880

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 18 2018 11:13 am

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DECISION

DEL ROSARIO, P.J.:

This Petition for Review (with Urgent Motion to Suspend the Collection of Tax) was filed by petitioner Barrio Fiesta Manufacturing Corporation against respondent Commissioner of Internal Revenue, praying for the issuance of: (i) an order suspending the collection of the alleged deficiency value-added tax, interest and compromise penalty; ii) a judgment declaring null and void the Warrant of Distraint and/or Levy (WDL) dated June 21, 2018 and the assessment upon which the WDL is based for the alleged deficiency income tax, value-added tax, and expanded withholding tax for the taxable year 2014 in the total amount of Fifty Three Million Two Hundred Eighty Eight Thousand Two Hundred Twenty Three and 35/100 Pesos (₱53,288,223.35); and, iii) a judgment ordering respondent to withdraw and cancel the aforestated WDL and the assessments upon which it is based.

THE PARTIES

Petitioner Barrio Fiesta Manufacturing Corporation is a corporation duly registered under the laws of the Philippines, with address at 17 F. Lazaro St., West Canumay, Valenzuela City, Metro Manila.[1]

Respondent Commissioner of Internal Revenue ("CIR") is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office. He may be served with summons, notices and other court processes at his office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.[2]

THE FACTS

On May 27, 2016, respondent issued Letter of Authority ("LOA") No. LOA-024-2016-00000160 authorizing the examination of the books of accounts and other accounting records of the petitioner for all internal revenue taxes, including documentary stamp tax and other taxes, for the period from January 1, 2014 to December 31, 2014. The said LOA was received by petitioner on June 1, 2016.[3]

On July 2, 2018, petitioner received WDL No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 issued by respondent. The WDL was issued allegedly due to petitioner's failure and refusal to pay its delinquency tax amounting to ₱53,288,223.35 for taxable year 2014.[4]

On July 23, 2018, petitioner filed its "Petition for Review (with Urgent Motion to Suspend the Collection of Tax)" before this Court.[5]

On August 8, 2018, summons were issued to the Office of the Solicitor General ("OSG") and respondent requiring them to file an Answer to the Petition for Review within fifteen (15) days from service of said summons, with a reminder that petitioner will take a judgment by default and may be granted the relief applied for in the Petition if they fail to answer within the allowed period. The OSG and respondent

[1] Petition for Review, CTA Docket, p. 12.
[2] Petition for Review, CTA Docket, p. 13.
[3] Exhibit "P-4", CTA Docket, p. 141.
[4] Exhibit "P-3", CTA Docket, p. 140.
[5] CTA Docket, pp. 12-34.

received the summons together with a copy of the Petition for Review on August 9, 2018 and August 14, 2018, respectively.[6]

In a Resolution dated August 8, 2018, the Court granted petitioner a period of five (5) days before the scheduled hearing on September 6, 2018 of petitioner's "Urgent Motion to Suspend Collection of Tax" within which to submit the judicial affidavits of its witnesses. Respondent was given a period of five (5) days within which to file his comment/opposition to the aforestated Urgent Motion.[7]

On August 15, 2018, petitioner filed an "Urgent Motion to Lift Garnishment and to Dispense with the Payment of the Bond."[8] On August 17, 2018, the Court promulgated a Resolution directing respondent to file his comment/opposition to petitioner's Urgent Motion within five (5) days, setting the hearing on September 6, 2018 and directing the parties to submit the judicial affidavits of their respective witnesses at least five (5) days before the scheduled hearing.[9]

Respondent, however, failed to file his comment on petitioner's "Urgent Motion to Suspend Collection of Tax" as per Records Verification dated September 3, 2018.[10]

Petitioner then presented its lone witness, Mr. Crosaldo M. Suni during the hearing on September 6, 2018.[11] Thereafter, petitioner filed its "Formal Offer of Evidence" on September 17, 2018.[12]

On September 17, 2018, respondent filed an "Urgent Motion to File/Admit Verified Answer with Leave of Court and to Suspend Proceedings", praying for an additional period of thirty (30) days to file his Answer to the Petition for Review and to suspend the proceedings.[13]

Meanwhile, respondent failed to file his comment to petitioner's "Urgent Motion to Lift Garnishment and to Dispense with the Payment

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[6] CTA Docket, pp. 47-48.
[7] CTA Docket, p. 50.
[8] CTA Docket, pp. 51-60.
[9] CTA Docket, p. 111.
[10] CTA Docket, p. 242.
[11] CTA Docket, pp. 262-263.
[12] CTA Docket, pp. 272-282.
[13] CTA Docket, pp. 433-436.

of the Bond" and petitioner's "Formal Offer of Evidence" as per Records Verification dated October 19, 2018.[14]

On November 12, 2018, the Court promulgated a Resolution directing petitioner to file its comment to respondent's "Urgent Motion to File/Admit Verified Answer with Leave of Court and to Suspend Proceedings" within ten (10) days from notice thereof. There being no comment filed by respondent on petitioner's "Urgent Motion to Lift Garnishment and to Dispense with the Payment of the Bond" and petitioner's "Formal Offer of Evidence", the same were deemed submitted for resolution of the Court. [15]

On November 28, 2018, petitioner filed a "Comment/Opposition with Motion to Declare Respondent in Default (To Commissioner of Internal Revenue's Urgent Motion to File/Admit Verified Answer with Leave of Court and to Suspend Proceedings)."[16]

On December 13, 2018, the Court promulgated a Resolution denying respondent's "Urgent Motion to File/Admit Verified Answer with Leave of Court and to Suspend Proceedings" and granting petitioner's "Motion to Declare Respondent in Default." Respondent received his copy of the aforesaid Resolution on December 21, 2018.[17] **Since respondent was declared in default, the case was set for petitioner's *ex parte* presentation of evidence.**[18]

In a Resolution dated December 18, 2018 anent the incidents on the suspension of collection <u>and</u> lifting of garnishment, the Court resolved to:

1. Admit all the documents offered by petitioner in its "Formal Offer of Evidence" filed on September 17, 2018, except for Exhibits "P-1", "P-10" and "P-19";

2. Grant petitioner's "Urgent Motion to Suspend the Collection of Tax" and "Urgent Motion to Lift Garnishment and to Dispense with the Payment of the Bond";

3. Lift the Warrants of Garnishment on certain bank accounts of the petitioner pending the resolution of the case;

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[14] CTA Docket, p. 439.
[15] CTA Docket, pp. 444-445.
[16] CTA Docket, pp. 446-453.
[17] CTA Docket, p. 454.
[18] CTA Docket, pp. 455-458.

4. Dispense with the payment of the bond; and

5. Suspend the collection of the amount of deficiency taxes indicated in the Warrants of Garnishment pending the resolution of the case.[19]

During the hearing of the case on the merits held on January 22, 2019, petitioner presented its witness Mr. Crosaldo M. Suni.[20]

On February 18, 2019, petitioner filed its "Formal Offer of Evidence."[21] The Court admitted all the documents offered by petitioner, except for Exhibits "P-10" and "P-19" for failure of the actual documents to correspond to the description in the Formal Offer of Evidence, in a Resolution dated March 4, 2019.[22]

With the filing of petitioner's "Memorandum" on March 26, 2019,[23] the Petition for Review was submitted for decision on April 10, 2019.[24]

THE ISSUE

The issue in this case is whether or not petitioner is liable for deficiency income tax, value-added tax, and expanded withholding tax, in the total amount of Fifty Three Million Two Hundred Eighty Eight Thousand Two Hundred Twenty Three and 35/100 Pesos (₱53,288,223.35) for taxable year 2014.

PETITIONER'S ARGUMENTS

Petitioner claims the following:[25]

1. The assessment is void since petitioner never received the Preliminary Assessment Notice and Final Assessment Notice.

2. The assessment is void or inexistent since respondent's right to assess had already prescribed. The three (3) year period to

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[19] CTA Docket, pp. 463-471.
[20] CTA Docket, pp. 571-572.
[21] CTA Docket, pp. 585-596.
[22] CTA Docket, pp. 658-659.
[23] CTA Docket, pp. 660-677.
[24] CTA Docket, p. 679.
[25] CTA Docket, pp. 660-677, 665-674.

assess petitioner of internal revenue tax liabilities during the taxable year 2014 had already lapsed, *sans* an assessment being issued even until the filing of the present case, thus, respondent is barred from assessing petitioner.

3. The Warrant of Distraint and/or Levy is void since it is based on an invalid/inexistent assessment.

4. Petitioner is not liable for alleged deficiency income tax, value-added tax (VAT) and expanded withholding tax in the total amount of ₱53,288,223.35, inclusive of interest and penalties.

As aforestated, **since respondent was declared in default, he therefore did not present evidence on the case**. Interestingly, the declaration of default was never assailed by respondent via a motion for reconsideration.

THE COURT'S RULING

CTA has jurisdiction over the case pursuant to Section 7(a) (1) of RA 1125, as amended

The jurisdiction of the CTA is conferred by Republic Act ("RA") No. 1125, as amended by RA No. 9282. Specifically, Section 7 (a)(1) of RA No. 1125, as amended, provides:

> "SEC. 7. *Jurisdiction*. – The CTA shall exercise:
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> (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**;
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> xxx xxx xxx" (Emphasis supplied)

The rule is now trite that the jurisdiction of the CTA is not limited to decisions on disputed assessments by the Commissioner of Internal Revenue ("CIR"), but also includes other matters involving the interpretation and implementation of the NIRC of 1997, as amended. In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[26] the Supreme Court made the following clarification:

> "...[W]e have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**
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> Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other**. This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment." (Boldfacing supplied)

The Supreme Court further elucidated on what falls under the phrase "other matters arising under this Code" in *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*,[27] to wit:

> "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 directly related 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 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**.
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> In *Enrile v. Court of Appeals*, the Court, applying the statutory construction principle of *ejusdem generis*, explained the import of using the general clause "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs" in the enumeration of cases subject to the exclusive appellate jurisdiction of the CTA, saying that:

[26] G.R. No. 169225, November 17, 2010.
[27] G.R. No. 207843, July 15, 2015.

> "[T]he 'other matters' that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as *ejusdem generis*. (Emphasis and underscoring supplied)" (Boldfacing and underscoring supplied)

Indubitably, the phrase "other matters arising under this Code" pertains to cases that are to begin with, subject to the exclusive appellate jurisdiction of the CTA.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[28] the Supreme Court confirmed that the term "other matters" includes the determination of the validity of a Warrant of Distraint and/or Levy ("WDL") issued by the CIR, *viz.*:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. <u>It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid</u>** and to rule if the Waiver of Statute of Limitations was validly effected.
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> **This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue**. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." (Boldfacing and underscoring supplied)

Here, the subject Petition for Review prays that the WDL No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 issued by respondent and the assessment upon which it is based be declared null and void. Pursuant to Section 7(a)(1) of RA No. 1125, as amended, and the aforecited jurisprudence, this Court has jurisdiction over the subject matter of the present controversy. Indeed, the issue on the validity of WDL No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 falls under the phrase "other matters arising under the National Internal Revenue Code."

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

Anent the timeliness of the subject Petition for Review, records show that petitioner received WDL No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 on July 2, 2018.[29] Since the subject Petition for Review was filed on July 23, 2018,[30] the Petition for Review was filed within the thirty-day reglementary period provided under Section 11 of RA 1125, as amended by RA 9282.

Warrant of Distraint and/or Levy is invalid

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner on which tax deficiency assessments should be issued, *viz.*:

> "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 pre-assessment notice shall not be required in the following cases:
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> **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.**
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> 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.**
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> 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.
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> 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." (Boldfacing supplied)

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[29] Exhibit "P-3", CTA Docket, p. 140.
[30] CTA Docket, pp. 12-34.

To implement the provisions of Section 228 of the NIRC of 1997, as amended, RR No. 12-99 was issued, which was later amended by RR No. 18-2013 dated November 28, 2013, and further amended by RR No. 7-2018 dated January 22, 2018.

RR No. 12-99, as amended, provides:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.—
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 **Notice for Informal Conference.** - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case.
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> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.
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> Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations.
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> 3.1.2 **Preliminary Assessment Notice (PAN).** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> 3.1.4 **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). (Boldfacing supplied)

In sum, Section 228 of the NIRC, as amended, and RR No. 12-99, as amended, particularly Section 3 thereof, prescribe the due process requirement to be observed in issuing deficiency tax assessments, such as the issuance of a Notice of Informal Conference, Preliminary Assessment Notice ("PAN"), Final Assessment Notice ("FAN") & Formal Letter of Demand ("FLD") by the BIR. Strict compliance with the due process requirement is mandatory to make the assessment valid.

In the case at bar, petitioner denies receipt of a PAN and FAN from respondent[31] and argues that such failure of respondent to serve the PAN and FAN unto petitioner rendered WDL No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 void.

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,*[32] the Supreme Court ruled that while a mailed letter is deemed received by the addressee in the ordinary course of mail, this remains merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the

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[31] Exhibit "P-70", Judicial Affidavit of Crosaldo M. Suni, CTA Docket, pp. 480-482.
[32] G.R. No. 157064, August 7, 2006, citing *Protector's Services, Inc. vs. Court of Appeals*, 386 Phil. 611, 623 (2000).

presumption to prove that the mailed letter was indeed received by the addressee, thus:

> "In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3 (v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.**" (Boldfacing supplied)

Relatedly, in *Estate of the Late Juliana Diez Vda. de Gabriel vs. Commissioner of Internal Revenue*,[33] the Supreme Court reiterated its pronouncement that due process requires that the assessment must be **served on and received** by the taxpayer, *viz.*:

> "(D)ue process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
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>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. **To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.**" (Boldfacing supplied)

Thus, it is not simply a question of whether the PAN and FAN were sent to petitioner by respondent, but it is imperative that the taxpayer **actually received** said tax assessment notices.

Although the Court frowns upon petitioner's bare blanket denial of receipt of any of the notices, it was, however, incumbent upon respondent to prove by preponderant evidence that the PAN and FAN were actually received by petitioner. Unfortunately, respondent failed to discharge this burden. As earlier stated, respondent was declared in default and therefore presented no evidence to prove that a PAN and FAN were indeed sent to petitioner.[34] Records show that notwithstanding respondent's receipt on December 21, 2018 of the

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[33] G.R. No. 155541, January 27, 2004.
[34] CTA Docket, pp. 455-458.

Resolution dated December 13, 2018, declaring respondent in default and setting petitioner's *ex parte* presentation of evidence on January 22, 2019, respondent remained passive and did not bother to seek a reconsideration thereof. Respondent's failure to prove that a valid assessment notice was duly served upon and received by petitioner, in compliance with the due process requirements anent the issuance of an assessment, was certainly fatal to his cause.

To be sure, the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. The eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[35] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[36] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process**.
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> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
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> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.**
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> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:

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[35] G.R. Nos. 201398-99, October 3, 2018.
[36] G.R. Nos. 201418-19, October 3, 2018.

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. 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. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was **deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice** as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **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.
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> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the

> erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed.** (Emphasis supplied)

> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. Xxx" (Citations omitted)

In view of respondent's failure to prove that he actually issued and sent a PAN and FAN to petitioner, and that the same were actually received by the latter, there is no valid assessment which could be a valid subject of collection under WDL No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 on July 2, 2018. Stated otherwise, there being no final and valid assessment to begin with, WDL No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 is void and must perforce be cancelled and set aside.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 and the assessment upon which it is based are **DECLARED VOID, CANCELLED** and **SET ASIDE.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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