REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES *Petitioner,*	**CTA EB CRIM. CASE NO. 016** (CTA Crim. No. O-028)
	Present:
-versus-	**Castañeda, Jr.** **Bautista,** **Uy,** **Casanova,** **Fabon-Victorino,** **Mindaro-Grulla,** and **Cotangco-Manalastas,** JJ.
RUPERTO P. RODRIGUEZ, *Respondent.*	**Promulgated:** MAR 13 2013 Cw Apolinario 1:30 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

On appeal before the Court *En Banc* by way of a *Petition for Review*[1] filed on October 12, 2011 pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503[2], are the September 7, 2011 *Resolution*[3] and July 12, 2011 *Decision*[4] of the First Division of this Court in CTA Crim. No. O-028, entitled *"People of the Philippines vs. Ruperto P. Rodriguez"*.

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[1] *Rollo*, pp. 5-15.

[2] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."

[3] *Rollo*, pp. 56-63.

[4] *Rollo*, pp. 16-47.

The dispositive portions of the appealed *Resolution* and *Decision* read:

Resolution dated September 7, 2011:

> "**WHEREFORE**, premises considered, plaintiff's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Decision dated July 12, 2011:

> "**WHEREFORE**, premises considered, accused **RUPERTO P. RODRIGUEZ** is hereby **ACQUITTED** on reasonable doubt. The cash bond posted by accused is hereby **CANCELLED** and ordered **RELEASED** to its lawful owner upon presentation of proper documents, in accordance with usual accounting rules and regulations.
>
> Moreover, the subject assessment against Luzon for taxable year 2000 is hereby **CANCELLED** and **SET ASIDE**, on procedural grounds.
>
> No Costs.
>
> **SO ORDERED**."

Petitioner challenges the civil aspect of the *Decision* promulgated by Court in Division on July 12, 2011 and begs of this Court to: [i] uphold the validity of the tax deficiency assessments of P6,925,442.48 issued by the Bureau of Internal Revenue (BIR) against Luzon Surety and Insurance Co., Inc., ("Luzon Surety") for taxable year 2000; and; [ii] order respondent Ruperto P. Rodriguez, Vice-President for Finance/Corporate Secretary of Luzon Surety, to pay the amount of P6,925,442.48 as its deficiency tax liability for taxable year 2000 plus 20% delinquency interest per annum on said deficiency tax liability pursuant to Section 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

FACTS OF THE CASE

The antecedents of the case as culled from the *Decision* of the First Division are as follows:

> "Accused Ruperto P. Rodriguez is charged before this Court with "Violation of Section 255 in relation to Section

253 (d) and 256 of the Tax Code of 1997, as amended by RA 8424, under an Information which reads as follows:

"INFORMATION"

"The undersigned accuses **RUPERTO P. RODRIGUEZ** of a Violation of Sec. 255 in relation to Section 253 (d) and 256, Tax Code of 1997 as amended by Republic Act No. 8424, committed as follows:

That on or about February 23, 2004, in the City of Manila, Philippines, the said accused, being then the Vice-President Finance/ corporate secretary of Luzon Insurance Surety Company, Inc. located at 2F William Burke Street, Binondo, this City, having filed his internal revenue tax for the year 2000, and after an examination and audit of the same, it has been found that there is due and collectible from said Luzon Insurance Surety Company, Inc., the following amount:

Kind of Tax	Assessment No.	Year	Date	Amount
Def. Income Tax	30-2000	2000	January 23, 2004	2,453,893.17
Comp. Penalty on Income Tax	30-2000	2000	January 23, 2004	25,000.00
Def. Value Added Tax	30-2000	2000	January 23, 2004	2,664,971.17
Comp. Penalty on VAT	30-2000	2000	January 23, 2004	25,000.00
Def. on Expanded Withholding Tax	30-2000	2000	January 23, 2004	415,215.19
Comp. Penalty on EWT	30-2000	2000	January 23, 2004	16,000.00
Def. On Documentary Tax	30-2000	2000	January 23, 2004	1,301,238.51
Comp. Penalty on Documentary Stamp Tax	30-2000	2000	January 23, 2004	20,000.00
Def. on Registration Fee	30-2000	2000	January 23, 2004	924.44
Comp. Penalty on Registration Fee	30-2000	2000	January 23, 2004	200
Def. on Compromise Penalty	30-2000	2000	January 23, 2004	3,000.00
				6,925,442.48

for the said year, did then and there wilfully and unlawfully fail , refuse or neglect to pay said taxes and without formally protesting against or appealing the same, despite due assessment notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of P6,925,442.48, Philippine Currency.

Contrary to law." L

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We scrutinize (sic) the evidence adduced by both parties.

It is established from the records that a Letter of Authority No. 2000- 00020936 dated July 4, 2002 was issued to Revenue Officer Rodolfo Mendoza and Group Supervisor Myrna V. Querubin, to audit and /or examine the books of accounts and other accounting records of Luzon for taxable year 2000, and said revenue officers accordingly submitted their Memorandum Report dated May 26, 2003 to the Revenue District Officer of RDO No. 30 explaining in detail the results of their audit investigation. Upon review by Revenue Officer Edna Ortalla, she issued a Revised Revenue Officer's Audit Report, and Pre-Assessment Notice for deficiency income tax, EWT, VAT, DST, and Registration Fee against Luzon, sent by the Assessment Division to said company. As the pre-assessment was not allegedly refuted by Luzon, Final Assessment Notices on Registration Fee, EWT, DST, VAT and income tax, together with corresponding Demand Letters were sent to Luzon. Thereafter, the docket was forwarded to the Collection Division for enforcement of collection of deficiency taxes due to the failure of Luzon to file administrative protest prescribed under Section 228 of the *NIRC of 1997, as amended.*

Consequently, the Letter dated June 21, 2005 was prepared by prosecution witness, Josefina T. Agapinan, addressed to accused Ruperto P. Rodriquez as VP-Finance and Corporate Secretary of Luzon, upon instruction of her immediate supervisor, Atty. Arthur Carandang of the Legal Division of Manila, requesting for the payment of supposed tax liabilities for the year 2000 within ten (10) days from receipt thereof. She also testified that she saw the name of accused: "Ruperto P. Rodriguez, Jr., VP-Finance/ Corporate Secretary" as the signatory in the Income Tax Return (ITR) of Luzon for taxable year 2000. As no payment was made by accused or Luzon, a Warrant of Distraint and/or Levy for the total amount of P6,925,532.48 was subsequently issued to enforce the collection of the subject taxes. Subsequently, the instant criminal case was filed against herein accused.

It was also established that Luzon was placed under conservatorship on December 22, 2004; then, under receivership on April 17, 2006, and now under liquidation since July 28, 2006 because Luzon had been declared as insolvent by the Insurance Commission; and that the true address of Luzon is 2nd Floor, LUZCO Building, 360 William Burke St., Escolta, Manila.

Although it is apparent from the records that Luzon was informed about the examination conducted and the

> initial findings of the BIR as regards the subject deficiency taxes, however, there appears to be a gap in the series of the required due notice to the taxpayer. The prosecution failed to prove that the accused, or any of the representatives of Luzon, was duly notified of the Preliminary Assessment Notice (PAN) dated January 7, 2004. There is no evidence adduced by the prosecution to prove that the PAN was duly served to the accused, or to any of the authorized representatives of Luzon. The prosecution tried to show service of the Final Assessment Notice (FAN) and the corresponding demand letters when it presented the BIR's Document Locator, with Registry Receipt Number 803582 (Exhibit "QQ") which was mailed on January 23, 2004 and a Registry Return Card (Exhibit "PP"). However, both documents failed to clearly establish that one of the documents served under said registered mail is the PAN. xxx"

On July 12, 2011, the Court in Division acquitted accused on reasonable doubt, and the subject assessments against Luzon Surety for taxable year 2000 was cancelled and set aside on procedural grounds.

Finding no legal basis to reconsider the challenged *Decision*, the Court in Division denied for lack of merit plaintiff's [petitioner herein] motion for partial reconsideration on September 7, 2011.

Hence, the filing of the instant *Petition for Review.*

Respondent herein Ruperto P. Rodriguez filed his *Comment [On the Petition for Review]*[5] on November 2, 2011. In a Resolution dated December 12, 2011, petitioner was ordered to submit an original or certified true copy of Revenue Delegation Authority No. 2-2007 dated March 1, 2007 pursuant to Section 3 of Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioner filed its *Compliance*[6] on December 22, 2011.

On February 9, 2012, this Court resolved to give due course to the present *Petition for Review* and ordered the parties to submit their respective memoranda.[7]

Petitioner timely filed its *Memorandum*[8] on March 15, 2012. Respondent filed his *Memorandum*[9] on April 10, 2012.

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[5] *Rollo*, pp. 68-72.
[6] *Rollo*, pp. 77-81.
[7] *Rollo*, pp. 84-86.

Considering the parties' respective Memoranda, the present *Petition for Review* was submitted for decision on April 26, 2012.

ISSUE

WHETHER THE FIRST DIVISION OF THIS COURT COMMITTED REVERSIBLE ERROR WHEN IT CANCELLED THE DEFICIENCY TAX ASSESSMENT OF P6,925,442.48 ISSUED BY THE PETITIONER AGAINST RESPONDENT COVERING FISCAL YEAR 2000 ON THE GROUND THAT NO PRE-ASSESSMENT NOTICE WAS SENT/SERVED TO THE RESPONDENT.

Arguments of Petitioner[10]

Petitioner maintains that: the deficiency assessments with aggregate amount of P6,925,442.48 for taxable year 2000 were based on factual findings of revenue officers of BIR-Manila which was never disputed/protested by the corporate taxpayer Luzon Surety, hence, they have become final, demandable, and executory; despite repeated demands, Luzon Surety failed to pay the said deficiency tax.

Further, petitioner argues that even assuming the Preliminary Assessment Notice (PAN) was not sent or received by Luzon Surety, the prosecution had proven that the Final Assessment Notices (FAN) and the corresponding demand letters thereto were actually mailed to Luzon Surety; it is of no moment whether the PAN was received by Luzon Surety as the presumption of regularity in the performance of official duties is in favor of the revenue employees who made the assessments; all presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue, the taxpayer must prove the contrary; and the absence of preliminary assessment notice would not affect the validity of formal final assessment notice issued by the respondent.

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[8] *Rollo*, pp. 87-99.
[9] *Rollo*, pp. 104-120.
[10] *Rollo*, pp. 94-97.

Arguments of Respondent[11]

Respondent counters that petitioner's position is not in accordance with jurisprudence, arguing that while there is a presumption that mail matters by the BIR were received by the taxpayers concerned, this presumption is disputable; the denial by respondent of having received the notices of assessment and demand letters effectively overcame the presumption petitioner is asserting; petitioner failed to overcome the burden of proving that the alleged assessment notices and demand letters were received by respondent.

Further respondent reasons that the BIR's failure to prove that assessment notices and demand letters were served on and received by Luzon Surety renders the assessment void; and since the taxable year subject hereof is 2000, the right of the BIR to assess and collect taxes against Luzon Surety has already prescribed.

Lastly, respondent submits that the BIR could not validly collect alleged unpaid taxes of Luzon Surety through this criminal case; to enforce the collection of tax against Luzon Surety in this criminal case against respondent Ruperto P. Rodriguez would violate Luzon Surety's substantive right to due process; Luzon Surety should have been served summons, required to answer and given a chance to be heard separate from the hearing on the criminal case against its officer, Ruperto P. Rodriguez; and the warrant of arrest issued on respondent could not be considered a substitute for the summons that Luzon Surety should have been served with considering that Luzon Surety and respondent herein have separate and distinct personalities.

RULING OF THE COURT *EN BANC*

The *Petition for Review* fails on the merits.

This Court has observed that the Court in Division has painstakingly gone over and ruled on every argument/issue of petitioner in the *Decision* dated July 12, 2011 and the same ruling was reiterated in the *Resolution* dated September 7, 2011. On this point, *We* find no compelling reason to deviate from the conclusions arrived at by the Court in Division.

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[11] *Rollo*, pp. 115-119.

Prosecution failed to prove that the PAN was duly served to the accused

After a second hard look at the records, *We* are convinced that there is indeed a dearth of evidence to prove the actual sending of the PAN to the accused, or to any of the authorized representatives of Luzon Surety.

A rule echoed and re-echoed through the cases, concerning proof of service of assessments and proof of mailed letters, is 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.'[12] However, '**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.'[13] Simply put, '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* shifts to BIR to prove by contrary evidence that the taxpayer received the assessment in the due course of mail.'[14]

The Rules of Court provides for the procedural requirements that must be followed or resorted to in order to establish receipt of a particular mailed document by the addressee. Section 13, Rule 13 of the Rules of Court reads: *L*

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[12] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006 citing *Protector's Services, Inc. vs. Court of Appeals*, G.R. No. 386 Phil. 611, 623 (2000).

[13] *Republic v. Court of Appeals*, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 355.

[14] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5662 May 17, 2000.

RULE 13
FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS

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SEC. 13. *Proof of service.*—Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

The records of this case belie compliance therewith. As aptly found by the Court in Division in its *Decision*[15] dated July 12, 2011:

"There is no evidence adduced by the prosecution to prove that the PAN was duly served to the accused, or to any of the authorized representatives of Luzon. The prosecution tried to show service of the Final Assessment Notice (FAN) and the corresponding demand letters when it presented the BIR's Document Locator, with Registry Receipt Number 803582 (Exhibit "QQ") which was mailed on January 23, 2004 and a Registry Return Card (Exhibit "PP"). However, both documents failed to clearly establish that one of the documents served under said registered mail is the PAN. xxx"

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"In this regard, the records of this case negate compliance with the rudiments on procedural due process. The mere presentation of transmittal records by the prosecution is insufficient to establish that indeed, the preliminary assessment notice (PAN) and assessment notice, and letter of demand were sent to, and were duly received by Luzon's authorized representative, because transmittal records, by its very nature, do not clearly indicate or specify the nature of the document being mailed or sent out. Uncorroborated by other evidence to definitely identify, not only the nature of the mail matter sought to be proven as having been delivered, but also, the authority of the person who supposedly received said mail matter, have little

[15] *Supra*, Note 4.

probative value to establish notice to Luzon to pay its subject corporate tax liabilities."

The Rules of Court requires the presentation of the registry receipt and affidavit of the person mailing as proof of service. However, no such affidavit and testimony of the person who allegedly mailed them were submitted for the consideration of this Court. 'The rule is that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.'[16]

Clearly, the prosecution utterly failed to satisfactorily discharge its burden of proving that it was able to serve the required PAN to accused or any of the authorized representatives of Luzon Surety.

Petitioner's failure to send the PAN negates the due process requirement in the issuance of deficiency tax assessments.

The failure of the prosecution to strictly comply with the requirement of service of the PAN prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (RR) No. 12-99 is tantamount to a denial of due process.

Section 228 of the NIRC of 1997 mandates the sending of a PAN in order to apprise the taxpayer of his deficiency tax liabilities. A taxpayer 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."[17]

From the provisions RR No. 12-99 of the BIR, it is clear that "the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement

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[16] Del Rosario vs. Cedillo, A.M. No. MTJ-04-1557, October 21, 2004, 441 SCRA 70.
[17] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. **The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN**. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of xxx due process."[18]

Petitioner's reliance in the case of *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008, 461 SCRA 565, is misplaced. The same cannot be applied in this case. The issue therein was the non-compliance with the provisions of R.R. No. 12-85 which sought to interpret Section 229 of the old tax law. The Supreme Court held in the said case that "*[a] post-reporting and pre-assessment notice do not bear the gravity of a formal assessment notice. xxx. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice*". However, Republic Act No. 8424, which took effect on 1998, amended the provision of Section 229 [now Section 228] of the Tax Code on protesting an assessment. Section 228, the new provision of the Tax Code on protesting an assessment, now requires that the taxpayer must first be informed of the facts and the law upon which the assessment is made through the sending of a PAN. The law imposes a substantive, not merely a formal, requirement.[19]

Considering that the assessments involved herein are for the taxable year 2000, the mandates of the new provision of the Tax Code applies in this case.

The assessments made by the Commissioner of Internal Revenue are void.

Having established that the prosecution failed to strictly comply with the requirement of service of the PAN prescribed under Section 228 of the NIRC of 1997 and RR No. 12-99, and that such failure is tantamount to a denial of

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[18] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 citing *Tupas v. Court of Appeals*, G.R. No. 89571, February 6, 1991, 193 SCRA 597, 600.
[19] *Supra.*

due process; it is clear that the assessments made by the Commissioner of Internal Revenue are void.

It is now a settled rule in this jurisdiction that a void assessment bears no fruit.[20] Thus, no civil liability arises in this case.

WHEREFORE, premises considered, the *Petition for Review* is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice