REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MANILA MEDICAL SERVICES, INC. (MANILA DOCTORS HOSPITAL), Petitioner,	CTA CASE NO. 8867
	Members:
-versus-	FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 30 2019 1:20 p.m.

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DECISION

Fabon-Victorino, J.:

In its Petition for Review filed on August 13, 2014, petitioner Manila Medical Services, Inc. (Manila Doctors Hospital) seeks for the nullification and cancellation of the Warrant of Distraint and/or Levy dated July 10, 2014, as well as the Assessment Notices issued against it by respondent Commissioner of Internal Revenue (CIR) for alleged deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) assessments, including compromise penalties, in the sum of One Hundred Twenty-Seven Million Five Hundred Sixty-Three Thousand Eight Hundred Thirty-Four Pesos and 51/100 (₱127,563,834.51) for taxable year (TY) 2009, on the grounds that they were issued in violation of its right to due process and beyond the prescriptive period provided by law.

THE FACTS

Petitioner Manila Medical Services, Inc. (Manila Doctors Hospital) is a domestic corporation with business address at 667 United Nations Avenue, Ermita, Manila.[1] It was established primarily to operate, manage, own and maintain a hospital or hospitals, medical and chemical laboratories and such other enterprises, which may have similar or analogous undertakings or dedicated to services in connection therewith.[2] It was registered with the Securities and Exchange Commission (SEC) on July 26, 2005[3] with Company Registration No. 7927 and with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 000-343-183-000, as evidenced by its Certificate of Registration Nos. OCN8RC0000020213 and OCN8RC0000052586.[4]

Respondent, on the other hand, is the head of the Bureau of Internal Revenue (BIR) with the power, among others, to decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 13, 2009, July 16, 2009, October 15, 2009, and January 14, 2010, petitioner filed its Quarterly VAT Returns[5] for the four quarters of TY 2009. On April 15, 2010, it filed its Annual Income Tax Return (AITR)[6] for TY 2009.

By virtue of Letter of Authority (LOA) No. 00000722 dated May 20, 2010 and Electronic Letter of Authority No. LOA-033-2010-00000095 dated September 2, 2010, respondent conducted a tax investigation against petitioner for alleged deficiency taxes covering the period from January 1, 2009 to December 31, 2009.[7] Thereafter, respondent issued against petitioner Letter Notice No. 116-TRS-09-00-00040 dated May 30, 2011 with attached Details of

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[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, p. 386; Exhibit "P-1".
[2] Par. 6, JSFI, docket, vol. 1, p. 387; Exhibit "P-2".
[3] Par. 4, JSFI, docket, vol. 1, p. 387; Exhibit "P-1".
[4] Par. 5, JSFI, docket, vol. 1, p. 387; Exhibits "P-3" and "P-4".
[5] Exhibits "P-9", "P-10", "P-11", and "P-12".
[6] Exhibit "P-8".
[7] Par. 7, JSFI, docket, vol. 1, p. 387.

Withholding Agents/Payors and Payees Income Receipts Records.[8]

On November 19, 2012, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC of 1997, as amended (Waiver of the Defense of Prescription).[9]

Thereafter, petitioner received a Notice of Informal Conference (NIC) dated February 19, 2013, indicating its alleged deficiency IT, VAT and EWT.[10]

On July 15, 2014, petitioner received a Warrant of Distraint and/or Levy (WDL), reflecting its alleged deficiency IT, VAT, and EWT, plus increments and compromise penalty of ₱125,000.00 for TY 2009, or in the aggregate amount of ₱127,563,834.51.[11]

On August 13, 2014, petitioner filed the instant Petition for Review[12]

In his Answer[13], respondent states that petitioner was not deprived of its right to due process. Per the BIR Record, it received the Preliminary Assessment Notice (PAN) dated December 10, 2013 as well as the Final Assessment Notice (FAN), yet failed to file a protest to both PAN and FAN, resulting in the issuance of the assailed WDL dated July 10, 2014.

Prescription did not also set in by virtue of petitioner's execution of a Waiver of the Defense of Prescription extending his period to assess until December 31, 2013. In any event, per audit, petitioner filed a false return considering the substantial under-declaration of 90.80% of its revenue, allowing him ten (10) years from the date of discovery of the falsity of return to assess petitioner.

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[8] Par. 8, JSFI, docket, vol. 1, p. 387.
[9] Exhibit "P-25".
[10] Par. 9, JSFI, docket, vol. 1, p. 387; Exhibit "P-7".
[11] Par. 10, JSFI, docket, vol. 1, p. 387; Exhibit "P-6".
[12] Docket, vol. 1, pp. 14 to 32.
[13] Docket, vol. 1, pp. 62 to 73.

Moreover, the subject assessment had become final and executory, thus no longer appealable to the Court for petitioner's failure to file a protest to the PAN and FAN.

Finally, petitioner has the burden of proof to impugn the otherwise presumed valid assessments[14] which were issued in the regular course and within the reglementary period provided by law.

On October 13, 2014, petitioner filed its Reply (To Respondent's Answer dated 25 September 2014[15]) arguing as follows: 1) that there were no valid PAN and FAN issued to and received by it; 2) that the Waiver of the Defense of Prescription was invalid for it did not strictly conform with the provisions of RMO No. 20-90; and 3) that it did not file false returns.

After the Pre-trial Conference, the parties filed their Joint Stipulation of Facts[16] on the basis of which the Court issued a Pre-Trial Order dated March 4, 2015[17].

During the trial, petitioner presented Florencio A. Tenorio and Enrico T. Pizzaro, as its witnesses.

Witness **Florencio A. Tenorio** testified[18] that he was formerly petitioner's Deputy Controller and currently its Finance Director. As such, he is the custodian of all its corporate and tax record. He monitors and ensures petitioner's compliance with tax rules and regulations.

According to the witness, petitioner is principally engaged in operating, managing, owning and maintaining a hospital or hospitals, medical and chemical laboratories and such other enterprises, which may have similar or analogous undertakings or dedicated to services in connection therewith.[19] It is a registered taxpayer with Certificate of

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[14] *Behn Meyer & Co. v. Collector of Internal Revenue*, 27 Phil 647.
[15] Docket, vol. 1, pp. 80 to 88
[16] Docket, vol. 1, pp. 386 to 393.
[17] Docket, vol. 1, pp. 395 to 404.
[18] Exhibits "P-30" and "P-30-a".
[19] Exhibits "P-1" and "P-2".

Registration No. 8RC0000052586 and TIN 000-343-183-000[20].

Petitioner received the NIC dated February 19, 2013[21]. Thereafter, petitioner received the WDL dated July 10, 2014[22] without prior issuance of a PAN and FAN. That being the case the WDL is deemed void.

Moreover, assuming that the assessment issued against petitioner is valid, the right of the respondent to assess it for TY 2009 is already barred by prescription. Petitioner's tax returns for IT, VAT and EWT[23] show that the respective three (3)-year periods counting from either the date of actual filing of the said returns or the dates the returns were required to be filed already lapsed.

The witness opined that the Waiver of the Defense of Prescription executed by petitioner on November 19, 2012[24] was infirm, hence, did not validly extend respondent's 3-year period to assess it for internal revenue taxes for TY 2009. Allegedly, a) the Waiver was too broad since it covered all internal revenue taxes without indicating the tax types and amounts due; b) the signatory De Hian Ho N. Kua, at the time of the execution of the Waiver, was merely an OIC Hospital Director and not authorized by petitioner's Board of Directors (BOD) to do so; c) petitioner did not receive a copy of the Waiver after it was signed and accepted by respondent; d) only petitioner's representative appeared before the notary public for purposes of notarization; and e) the Waiver was executed after the 3-year period to assess insofar as certain taxes were concerned.

Lastly, the witness believed that respondent was incorrect in considering all pharmacy sales of petitioner amounting to ₱549,417,227.00 as VATable revenue. Allegedly only pharmacy sales to out-patients are subject to VAT and not the pharmacy sales to in-patients which form part of the services rendered by petitioner for the treatment and recovery of its patients, hence, not subject to VAT.

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[20] Exhibit "P-4".
[21] Exhibit "P-7".
[22] Exhibit "P-6".
[23] Exhibits "P-8" to "P-24-a".
[24] Exhibit "P-25".

Witness Tenorio further declared that he attended the Informal Conference and during which he explained that in-patient pharmacy sales are not VATable since they are inherent to the operation of the hospital as contained in BIR Ruling No. 039-2005. Prior to the NIC, petitioner received from respondent a document requiring it to submit some of its accounting records, which it did even before the scheduled Informal Conference. Computations of alleged tax liabilities were contained in some communications from respondent issued for purposes of the NIC. It was not he but a certain Teresita who received the assailed WDL[25], but he received a copy thereof from his secretary. Petitioner's Tax Returns were prepared by his accountant but reviewed by him before filing.

Finally, he was the one authorized to sign the Waiver of the Defense of Prescription and not the person who executed it. However, he was uncertain if petitioner could still issue an authorization to another for purposes of the Waiver.

The Court-commissioned Independent Certified Public Accountant **(ICPA) Enrico T. Pizzaro** testified[26] that he conducted the examination, audit and evaluation of petitioner's voluminous documents to determine whether petitioner is liable for the alleged deficiency IT, VAT and EWT for TY 2009, in the total amount of ₱127,563,834.51, inclusive of the basic taxes, surcharge, interests and compromise penalties.

In his ICPA Report[27] dated June 4, 2015, the following observations appear: 1) petitioner is liable for VAT in the amount of ₱10,914,148.41 from its other income while it is not liable for alleged deficiency VAT for TY 2009 in the amounts of ₱127,563,834.51, for VAT on the inpatient sales amounting to ₱237,850,027.71 and on non-taxable other income amounting to ₱2,335,113.59; 2) petitioner is also not liable for deficiency IT as an effect of disallowing retirement expense in the amount of ₱13,519,055.54; and 3) petitioner should not be subjected to deficiency EWT amounting to ₱2,047,223.76 .

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[25] TSN, March 23, 2015 Hearing, pp. 35 to 39.
[26] Exhibits "P-31" and "P-31-a".
[27] Exhibits "P-50" and "P-50-a".

ICPA Pizzaro explained[28] that the retirement benefit should be based on an actuarial report and there should be a proof of exemption. With respect to the in-patient sales for medicine/medical supplies, he confirmed that they are included in the term hospital services since medical services administered by the doctors can be considered as hospital services. As to the EWT assessment of petitioner, he considered it 95% flawed.

Anent retirement expense, the ICPA stated that per regulations, there should be an actuarial report certified to by an actuarial approved by the BIR before it can be recognized as part of service cost. In this regard, petitioner was able to comply with all the documentary requirements.

Petitioner rested after formal offer of its evidence[29] per Resolutions dated October 21, 2015[30] and March 29, 2016[31].

In support of his case, respondent presented Revenue Officers (ROs) Ma. Paz Arcilla, Edna A. Ortalla, Angeles Mores, Armando C. Macatangay, Teresita P. Reyes and Brenda P. Zantua.

Revenue Officer IV-Chief, Billing Section of the Assessment Division, **Ma. Paz Arcilla** testified[32] that petitioner's tax docket for TY 2009 was forwarded to her office for the issuance of the FAN and Formal Letter of Demand (FLD). On December 27, 2013, her office issued against petitioner a FAN for deficiency IT, VAT and EWT in the amounts of ₱7,373,634.59, ₱116,395,973.65 and ₱3,668,176.27, inclusive of increments under Assessment Notices with Nos. 33-09-IT-5818, 33-09-VT-5819,33-09-WE-5820, respectively, the FLD and FLD on Compromise Penalty on IT, VAT and EWT, all dated December 27, 2013[33]. On the same day, said FANs and FLDs were transmitted[34] to the Administrative Division of BIR-Manila for mailing to petitioner

[28] TSN, July 13, 2015 Hearing, pp. 15 to 27.
[29] Formal Offer of Evidence, docket, vol. 1, pp. 481 to 492; Motion for Reconsideration Re: Resolution dated October 21, 2015, docket, vol. 2, pp. 638 to 712; Supplemental Offer of Evidence, docket, vol. 2, pp. 801 to 962.
[30] Docket, vol. 2, pp. 597 to 631.
[31] Docket, vol. 2, pp. 965 to 979.
[32] Exhibits "R-49" and "R-49-a".
[33] Exhibits "R-37" to "R-44".
[34] Exhibit "R-56".

with address at 667 Manila Doctors Hospital, UN Avenue, Ermita, Manila. Thereafter, the BIR Administrative Division forwarded to her office a photocopy of the transmittal of the FAN and the FLD with the registry receipt of mailing.

Despite notice, petitioner failed to file its protest to the assessments within the prescribed period thus, its tax docket was forwarded to the Collection Division for enforcement of collection of the deficiency IT, VAT and EWT, including the increments and penalties thereon.

Witness Arcilla clarified[35] that as Chief of the Billing Section, she supervises the issuance and monitoring of the FAN and FLD prepared by her staff. The photocopies of the transmittal letter of the Administrative Division and the transmittal letter to the Central Post Office were her proof of transmittal and service of the FANs and FLDs to petitioner. On December 27, 2013, the Administrative Division, upon her query, confirmed that the FAN and FLD were mailed to petitioner as shown in the transmittal letter.

The Chief of the Assessment Section at the Assessment Division, **Edna A. Ortalla** testified[36] that petitioner's 2009 tax case was indorsed[37] to her office for review on March 22, 2013. It was assigned to RO Regina Arco, who reviewed the whole case docket including the investigation report submitted by RO Teresita Reyes. She found petitioner liable for deficiency IT of ₱7,398,633.59, VAT of ₱116,445,973.65, EWT of ₱3,693,176.27 and compromise penalty of ₱25,000.00, pursuant to Section 250 of the NIRC of 1997, as amended.

After the review, she instructed RO Arco to prepare the PAN with attached Details of Discrepancies[38]. On December 13, 2013, her office transmitted[39] the said PAN with attached Details of Discrepancies dated December 10, 2013 to Revenue District Office (RDO) No. 33, addressed to RO Teresita Reyes.

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[35] TSN, June 28, 2016 Hearing, pp. 8 to 11.
[36] Exhibit "R-50" and "R-50-a".
[37] Exhibit "R-25".
[38] Exhibit "R-34".
[39] Exhibit "R-35".

On December 17, 2013, her office received a Memorandum Report[40] with attachments from RO Teresita Reyes indicating that the PAN was personally served to petitioner on December 13, 2013. Thereafter, she forwarded a copy of the PAN to the Billing Section for the issuance of FAN and FLD against petitioner.

Witness Ortalla clarified[41] that RO Arco was not named in the LOA because she was with the Assessment Division[42] tasked to review petitioner's case after audit and before the issuance of the PAN. As to her Memorandum for the transmittal of the PAN to RDO No. 33 for service to petitioner, the same was only internal thus, not among those sent to petitioner. She admitted that the PAN attached to the record was not the receiving copy of the document.

Witness, **Angeles Mores** testified[43] that he has been a seizure agent at the Collection Division of Revenue Region 6, BIR-Manila since March 2013. He sends collection notices/demand letters to delinquent taxpayer, makes follow-up calls in the absence of any action from the taxpayer concern[44].

On May 7, 2014, petitioner's 2009 internal revenue tax case was assigned to him for enforcement of collection by virtue of a Memorandum of Assignment dated April 24, 2014[45] issued by then Collection Chief Marivic G. Tulio of Collection Division, Revenue Region No. 6, Manila. In connection thereto, he prepared the Preliminary Collection Letter (PCL) dated May 9, 2014[46], signed by Marivic G. Tulio, addressed to petitioner, and served via registered mail on May 13, 2014 under Registry Receipt Batch No. N033514051314, demanding payment of petitioner's 2009 deficiency tax assessments. He likewise prepared the Final Notice Before Seizure (FNBS) dated May 19, 2014[47] signed by Assistant Chief Enrique Gatchalian which was likewise served to petitioner through registered mail on May 22, 2014 under

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[40] Exhibit "R-36".
[41] TSN, September 5, 2016 Hearing, pp. 14 to 20.
[42] TSN, September 5, 2016 Hearing, pp. 20 to 23.
[43] Exhibits "R-51" and "R-51-a".
[44] TSN, November 21, 2016 Hearing, pp. 9 to 12.
[45] Exhibit "R-45".
[46] Exhibit "R-46".
[47] Exhibit "R-47".

Registry Receipt No. Batch No. N033514052214, demanding payment of its 2009 deficiency tax liabilities/assessments. Since petitioner failed to respond, he prepared the Memorandum dated June 20, 2014[48] for the Chief of Collection Division reporting the same.

Witness Mores admitted[49] that he was not familiar with the 3-year prescriptive period for the BIR to assess and that the subject assessment already prescribed. He merely presumed that the PCL and the FNBS he drafted were sent to petitioner since they were not returned to his Office.

Witness, **Armando Macatangay**, the Mailing Custodian of the Administrative Division of Revenue Region No. 6, BIR-Manila testified[50] that his duties include the sending of assessment notices and their corresponding FAN to taxpayers through registered mail.

Allegedly, he was asked by the Legal Division to testify on the mailing of the FAN and FLD issued against petitioner for TY 2009. For this reason, he checked the Assessment Division's Transmittal Slip of said FAN and FLD, which were kept at the Records Section of the Administrative Division of Revenue Region No. 6, BIR-Manila. The records showed that the FAN and FLD[51] issued against petitioner were all mailed on December 27, 2014 through registered mail under Registry Receipt No. 909401, at the Manila Central Post Office.

He recalled that he personally checked all the documents for mailing to petitioner, placed the FAN and FLD in one (1) envelope addressed to petitioner's registered address at 667 Manila Doctors Hospital, UN Avenue, Ermita, Manila, sealed it and attached a registry return receipt/card, and personally brought the mail matter to the Central Post Office Manila for mailing. Thereafter, he gave a copy of the Registry Receipt to the Chief of the Administrative Division for pasting in the transmittal slip[52], as proof that the documents indicated therein have been mailed to petitioner. He assumed that the

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[48] Exhibit "R-48".
[49] TSN, November 21, 2016 Hearing, pp. 6 to 9.
[50] Exhibits "R-52" and "R-52-a".
[51] Exhibits "R-37" to "R-44".
[52] Exhibit "R-56" to "R-57".

said documents were received by petitioner as they were not returned to their office[53].

RO **Teresita P. Reyes** testified[54] that she investigated the books of accounts and other accounting records of petitioner for TY ended December 31, 2009 as authorized under LOA No. LOA 2008 00000722 dated May 20, 2010[55] and Electronic LOA No. SN: eLA201000012161 LOA-033-2010-00000095 dated September 2, 2010[56], issued by Regional Director Alfredo V. Misajon of Revenue Region No. 6, BIR-Manila.

She personally served the original of the LOA together with the List of Audit requirements[57] and eLA to petitioner on May 31, 2010 and September 16, 2010, respectively. Petitioner however failed to submit its books of accounts and documents enumerated in the List of Audit Requirements despite notice. Thus, she prepared the First Notice dated June 16, 2010[58], which was personally served to petitioner on the same day, reiterating the request for submission of documents in the List of Audit Requirements. This was followed by the Second and Final Notice dated September 16, 2016[59]. Notwithstanding personal service and receipt of the said the Notices, petitioner failed to comply.

On March 5, 2012, she received a Memorandum[60] from RDO Josephine Virtucio for consolidation of Letter Notice (LN) 116-TRS-09-00-00040 dated May 30, 2011[61] with eLA201000012161 dated September 2, 2010. On November 19, 2012, petitioner, through its OIC Hospital Director, Hian Ho N. Kua, executed a Waiver of the Defense of Prescription[62], dated November 19, 2012. Thereafter, she examined petitioner's AITR with attached documents and accounting records for TY ended December 31, 2009. She also prepared a computation sheet[63] reflecting the results of her audit

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[53] TSN, February 27, 2017 Hearing, pp. 8 to 10.
[54] Exhibits "R-64" and "R-64-a".
[55] Exhibit "R-3".
[56] Exhibit "R-4".
[57] Exhibit "R-5".
[58] Exhibit "R-6".
[59] Exhibit "R-7".
[60] Exhibit "R-10".
[61] Exhibit "R-11".
[62] Exhibit "R-15".
[63] Exhibits "R-16" and "R-17".

finding petitioner liable for deficiency IT, VAT and EWT in the amounts of ₱6,654,418.32, ₱105,029,795.85 and ₱3,363,984.29, respectively, inclusive of increments. Then, she prepared the NIC dated February 19, 2013[64] with the attached computation sheets for IT, VAT and EWT, signed by RDO Josephine Virtucio. She personally served the said NIC to petitioner on February 21, 2013.

Subsequently, she prepared her RO's Audit Reports on petitioner's IT, VAT and EWT[65] deficiencies as reflected in the computation sheets. It was signed by her Group Supervisor Oscar Dera, RDO Josephine Virtucio, Atty. Diogenes C. Villarubia, OIC Chief of Assessment Division, and approved by OIC Regional Director Simplicio A. Madulara. She likewise prepared a Memorandum with attachments of her audit findings on petitioner's tax case for TY 2009[66].

Petitioner's tax docket for TY 2009 was indorsed and forwarded by RDO No. 33 to the Assessment Division of Revenue Region No. 6, BIR-Manila for review and possible issuance of PAN. On December 10, 2013, the Assessment Division issued a PAN[67]. On December 13, 2013, a copy of said PAN was endorsed to her office, which she personally served to petitioner on the same day. It was received by Marites Acop on behalf of petitioner. Such service of the PAN was indicated in the Memorandum Report[68] which she prepared, subscribed and sworn to before Revenue District Officer Gerry O. Dumayas. It was attached to the PAN and endorsed to the Assessment Division.

She served the PAN to petitioner[69] however, there is nothing in her copy showing that petitioner received it. The original of the PAN was served to petitioner through its accounting staff Ms. Acop,[70] who signed it in her presence. Only a duplicate remained with her since the original was forwarded to the Assessment Division with her Memorandum.

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[64] Exhibit "R-19".
[65] Exhibits "R-20" to "R-22".
[66] Exhibit "R-24".
[67] Exhibit "R-34".
[68] Exhibit "R-36".
[69] TSN, May 29, 2017 Hearing, pp. 9 to 21.
[70] TSN, May 29, 2017 Hearing, pp. 22 to 30.

The Chief Administrative officer of Manila Central Post Office since May 5, 2014, **Brenda C. Zantua**, testified[71] that she supervises the records and supply sub-units of the Administrative Unit. The former chief of the Records Unit was the late Rodrigo SP. Romero who died on August 18, 2015.

She was subpoenaed to present the Certification issued by Rodrigo Romero[72] indicating the delivery to petitioner of a document on February 4, 2014 by Jose De Guzman. The Certification was signed in her presence by Rodrigo SP. Romero. It was validly issued by the Records Unit of the Manila Central Post Office upon request[73], but she had no personal knowledge of its content.

Respondent rested[74] after his Formal Offer of Evidence on March 23, 2017[75].

THE ISSUE

The issues as stipulated by the parties[76] are as follows:

1. Whether a valid PAN was issued to and duly received by petitioner or his duly authorized representative;

2. Whether a valid FAN was issued to and duly received by petitioner or his duly authorized representative;

3. Whether the period to assess petitioner for any internal revenue taxes for TY 2009 had prescribed;

4. Whether the waiver executed on November 19, 2012 validly extended the original three-year prescriptive period to

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[71] TSN, November 21, 2017 Hearing, pp. 3 to 9.
[72] Exhibit "R-55".
[73] TSN, May 29, 2017 Hearing, pp. 11 to 15.
[74] Docket, vol. 4, pp. 2021-2022.
[75] Docket, vol. 4, pp. 1986-1995.
[76] JSFI, docket, vol. 1, p. 388.

assess petitioner for any deficiency taxes for TY 2009;

5. Whether pharmacy sales to in-patients are included in the term "hospital services" which are exempt from VAT under Section 109(G) of the NIRC of 1997;

6. Whether petitioner is liable for the alleged deficiency income tax, VAT, and EWT for TY 2009 in the aggregate amount of ₱127,563,834.51; and

7. Whether this Court has jurisdiction over the instant petition.

THE RULING OF THE COURT

Paramount in every Petition for Review filed before the Court is the determination of its jurisdiction to entertain it. The reason behind this is that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[77]

Petitioner contends that the Court has jurisdiction over the case as it falls under the term "other matters that arise out of the NIRC or related laws administered by the BIR" under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

Section 7(a)(1) of R.A. No. 1125, as amended, provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal, 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 or other law administered by the Bureau of Internal Revenue.

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[77] *Allied Banking Corporation v. CIR*, G.R. No. 175097, February 5, 2010.

Likewise, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides that the Court in Division shall exercise exclusive original or appellate jurisdiction to review by appeal the 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, <u>or other matters arising under the National Internal Revenue</u> or other law administered by the Bureau of Internal Revenue.

Significantly, in the case of *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*[78], the Supreme Court clarified that "[t]he 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. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."

Clear from the foregoing that the second part of Section 7(a)(1) of R.A. No. 1125, as amended, confers jurisdiction to the Court to determine if a warrant of distraint and levy issued by the BIR is valid. In other words, the issue falls within the ambit of other matters arising under the NIRC or other laws administered by the BIR.

Plainly, the Court has jurisdiction to entertain the present Petition for Review, which prays for the nullification and cancellation of the WDL dated July 10, 2014, as well as the Assessment Notices issued against it by respondent for alleged deficiency IT, VAT and EWT, including compromise penalties, on the alleged grounds that it was deprived of due process rendering the assessments void and for having been issued beyond the 3-year prescriptive period.

Petitioner strongly denies receipt of the PAN and the FAN issued by respondent. Respondent, on the other hand, insists that he validly issued the PAN and the FAN which were both

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

received by petitioner through its authorized representative Marites Acop. Such declaration was however contradicted by respondent's own witnesses, RO Teresita P. Reyes and Mailing Custodian Armando Macatangay. The first, who claimed to have served the original of the PAN to petitioner, declared that there was nothing in her copy of the PAN showing that it was actually received by petitioner. Meanwhile, witness Macatangay admitted that he did not take any step, action, or procedure to verify if the FAN and the FLD were actually received by petitioner. Moreover, RO Edna A. Ortalla, the Chief of the Assessment Section, BIR Assessment Division, admitted that the copy of the PAN attached to the BIR Record of the case was not the receiving copy of the purported PAN. In other words, there is nothing in the BIR record indicating that the original of the PAN was actually served and received by petitioner or its duly authorized representative. Intriguingly, respondent only formally offered Exhibit R-55 as his documentary evidence, which the Court, over the objection of petitioner, admitted. Clearly, without any supporting documents, the testimonies of respondent's witnesses cannot be given full weight and credence.

Section 228 of the NIRC of 1997, as amended, in relation to Section 2 of Revenue Regulations (RR) No. 18-2013[79], which amended certain sections of RR No. 12-99[80], explicitly requires notice upon the alleged erring taxpayer lest the assessment shall have no legal consequence, thus:

> 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: . . .
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> xxx xxx xxx

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[79] "AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT," dated November 28, 2013.

[80] "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY," dated September 6, 1999.

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

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

xxx xxx xxx

SECTION 2. Amendment. — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:

'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:

3.1.1 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 . . .
>
> 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.
>
> 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.
>
> xxx xxx xxx

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[81], the Supreme Court ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997 and RR No. 12-99, as amended, is tantamount to denial of due process. In the said case, the Supreme Court emphasized that the absence of a PAN renders nugatory any assessment made by the tax authorities, to wit:

> 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

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[81] G.R. No. 185371, December 8, 2010.

> 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.
>
> xxx xxx xxx
>
> From the provision quoted above, 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 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 Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.

A review of the record revealed that the PAN[82] and the FAN[83] were attached to the BIR record. This fact notwithstanding, respondent failed to formally offer the PAN, FAN and FLD. Respondent instead formally offered the Certification dated September 25, 2014 issued by the former Chief of Records Unit of the Manila Central Post Rodrigo Romero and marked as Exhibit 55, stating that a mail matter with Registered Mail No. 909401 and addressed to Manila Medical Services, Inc. was delivered by Jose De Guzman on February 4, 2014. However, there is no way by which Court could determine the documents referred to in Registered Mail No. 909401.

And as earlier noted, there was no evidence even in the BIR record that respondent was compliant with the notice requirement in the issuance of the subject assessments.

[82] BIR record, pp. 398 to 401
[83] BIR record, pp. 416 to 418

Aside from the testimony of respondent's witnesses and the Certification marked as Exhibit 55, there is nothing in the BIR Record of the case showing receipts of the PAN and the FAN issued by respondent against petitioner.

As held by the Supreme Court in the case of *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[84], to proceed with tax collection without first establishing a valid assessment is a violation of the cardinal principle in administrative investigation, *viz*:

> Both Section 228 of the NIRC of 1997 and Section 3.1.4 of RR No. 12-99 clearly require the written details on the nature, factual and legal bases of the subject deficiency tax assessments. The reason for the mandatory nature of this requirement is explained in the case of *Commissioner of Internal Revenue v. Reyes*:
>
>> 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."

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[84] G.R. No. 193100, December 10, 2014

In light of the foregoing laws, rules and jurisprudential guidelines, the Court finds that there is no sufficient evidence to prove petitioner's actual receipt of the PAN and FAN. As already emphasized, strict compliance with due process requirement is necessary for a valid tax assessment. For respondent's failure to establish that petitioner actually received the PAN, the subject assessment must be cancelled as petitioner was denied its right to due process.

Accordingly, the deficiency tax assessments for IT, VAT and EWT, including compromise penalties, in the aggregate amount of ₱127,563,834.51 for TY 2009, as well as the WDL dated July 10, 2014, issued against petitioner must be declared null and void for having been issued in violation of the due process requirements expressly mandated in Section 228 of the NIRC of 1997 and RR No. 12-99, as amended by RR No. 18-2013.

With this finding, it becomes unnecessary to resolve the other issues raised.

WHEREFORE, the instant Petition for Review filed on August 13, 2014, by petitioner Manila Medical Services, Inc. (Manila Doctors Hospital), is hereby **GRANTED**.

Accordingly, the Assessment Notices issued against petitioner Manila Medical Services, Inc. (Manila Doctors Hospital) by respondent Commissioner of Internal Revenue for alleged deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax, including compromise penalties, in the aggregate amount of ₱127,563,834.51 for taxable year 2009, as well as the Warrant of Distraint and/or Levy dated July 10, 2014, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice