REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

VITALO PACKAGING INTERNATIONAL, INC.,
Respondent.

CTA EB NO. 2148
(CTA Case No. 9231)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 03 2021
11:35 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against respondent Vitalo Packaging International, Inc. (Vitalo) seeking to set aside the assailed Decision of this Court's Second Division, dated July 5, 2019,[2] which granted the Petition for Review of Vitalo and cancelled and set aside the Final Letter of Demand (FLD)/Formal Assessment Notice (FAN) demanding payment in the amount of ₱63,322,955.83 representing deficiency income tax, final withholding tax (FWT), fringe benefit tax (FBT), and expanded withholding tax (EWT), including penalties and interests for calendar year (CY) 2006, and likewise setting aside the Preliminary Collection Letter (PCL) and Final Notice Before Seizure issued in relation thereto.

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[1] *Rollo*, pp. 7-22.
[2] *Id.*, pp. 23-70.

The CIR likewise seeks to set aside the Special Second Division's Resolution dated September 12, 2019[3] which denied his motion for reconsideration for lack of merit.

The Parties

Petitioner CIR is the duly appointed Commissioner of Internal Revenue vested under the law with authority to act as such, including, *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds office at the BIR National Office Building, Diliman, Quezon City.[4]

Respondent Vitalo Packaging International, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with registered address at Lot 1-B No. 118 Phase 5 East Main Ave., Laguna Technopark, Binan, Laguna 4024.[5] Petitioner is registered with the Bureau of Internal Revenue with Taxpayer Identification Number 049-149-160-000[6] and the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise under PEZA Certificate of Registration No. 96-088.[7]

The Facts[8]

Pursuant to Letter of Authority (LOA) No. 18873, Revenue Officer (RO) Enrico Cruz and Group Supervisor (GS) Edwin Montealegre of Revenue Region No. 9 - San Pablo City examined and investigated the Books of Accounts and other Accounting Records of Vitalo for CY 2006.[9]

On April 18, 2008, Vitalo filed with the Bureau of Internal Revenue - Revenue District Office (BIR-RDO) No. 057 an Application for Registration Information Update (BIR Form 1905), informing the latter of its change of registered office address from Bldg. 1, Panorama Compound, LIIP, 4024, Binan, Laguna (Panorama Compound) to Lot 1-B, No. 118 Phase 5 East Main Avenue, Laguna Technopark, Phase V, Binan Laguna (Laguna Technopark).[10] On even date, Vitalo was issued a Certificate of Registration reflecting its new registered

[3] *Id.*, pp. 71-76.
[4] *Id.*, p. 8.
[5] *Id.*, p. 24.
[6] *Docket* (Vol. III), p. 913, Exhibit "P-3".
[7] *Id.*, p. 915, Exhibit "P-4".
[8] As found by the Second Division and as culled from the records of the case.
[9] BIR Records, p. 575, "Exhibit "P-6".
[10] *Id.* at Note 6, p. 912, Exhibit "P-2".

address.[11]

On April 23, 2009, a Revalidation Notice was issued to Vitalo informing the latter that LOA No. 18873 was revalidated on the said date to replace the previously assigned ROs and authorizing RO Flora Coeli S. Penaloza to be supervised by GS Thelma M. Omalin to continue the examination of its books of accounts and all other accounting records.[12]

On November 6, 2009, a Notice of Informal Conference (NIC) was issued and addressed to Vitalo at its old address in Panorama Compound.[13]

On February 25, 2010, pursuant to the Pre-Audit and Review of 2006 Annual Income Tax Returns of PEZA Registered Companies, another NIC was issued, this time, under LOA No. 4547[14], informing Vitalo that its deficiency income tax amounted to ₱330,323.95 for TY 2006, after audit.[15] The NIC indicated the Panorama Compound as Vitalo's address.

On March 22, 2010, a Preliminary Assessment Notice (PAN) was issued under LOA No. 4574 and sent through registered mail to Vitalo's old address at Panorama Compound.[16]

On March 29, 2010, LOA No. 4547 was issued authorizing RO Ma. Evangeline B. Capuno and GS Dolores O. Zaporteza of RR No. 9 to audit the 2006 tax returns, books of accounts, and other accounting records of Vitalo.[17] The address indicated in the LOA was Vitalo's old Panorama Compound address.

Thereafter, Regional Director Rodita B. Galanto issued an FLD[18] and Assessment Notice[19] demanding payment in the total amount of ₱336,469.95 representing deficiency income tax for CY 2006. The address indicated in the FLD/FAN was Vitalo's Panorama Compound address.[20]

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[11] *Id.*, p. 913, Exhibit "P-3".
[12] *Id.* at Note 9, p. 579, Exhibit "R-3".
[13] *Id.*, p. 676, Exhibit " R-4".
[14] Issued pursuant to Pre-Audit and Review of 2006 Annual Income Tax Returns of PEZA Registered Companies.
[15] *Id.*, p. 186.
[16] *Id.*, pp. 188-189, Exhibit "P-7".
[17] *Id.*, p. 191, Exhibit "P-5".
[18] *Id.*, p. 195, Exhibit "P-8".
[19] *Id.*, p. 196, Exhibit "P-8-B".
[20] *Id.*, p. 195, Exhibit "P-8-A".

On May 24, 2010, Vitalo filed its protest to the FAN.[21]

On September 9, 2010, the CIR issued an Amended PAN to Vitalo, again indicating the latter's address as the Panorama Compound address.[22]

On December 3, 2010, the CIR issued an Amended FLD with Assessment Notice No. 57/2006.[23] The Amended FLD/FAN again indicated the Panorama Compound as Vitalo's address.

On May 25, 2011, the CIR issued a Preliminary Collection Letter (PCL), again addressed to Vitalo at its Panorama Compound address.[24]

On June 9, 2011, Vitalo contested the PCL and requested an extension to file the necessary memorandum, via letter, through Revenue District Officer Julio Alcasabas of RDO 57.[25]

On June 13, 2011, Revenue District Officer Alcasabas replied to Vitalo stating that its case docket was referred to the Assessment Section of RDO 57 for re-investigation.[26] The letter indicated the Panorama Compound as Vitalo's address.[27]

On June 30, 2011, Vitalo filed a reply with BIR RDO 57 requesting an extension of 30 days to file an explanation, as required by said office.[28]

On July 25, 2011, Revenue District Officer Alcasabas issued a letter to Vitalo stating that the letter-request for re-investigation was forwarded to the Regional Office, San Pablo City for approval.[29] The letter also said that his office was advised to proceed with the collection through summary proceedings. The letter indicated the Panorama Compound as Vitalo's address.[30]

On August 12, 2011, a Final Notice Before Seizure (FNBS) was issued to Vitalo, again using its Panorama Compound address.[31]

[21] *Id.*, pp. 123-141, Exhibit "P-9".
[22] *Id.*, pp. 692-697, Exhibit "R-8".
[23] *Id.*, pp. 703-715, Exhibit "R-9".
[24] *Id.*, p. 339, Exhibit "P-10".
[25] *Id.*, pp. 930-932, Exhibit "P-11".
[26] *Id.*, p. 933, Exhibit "P-12".
[27] *Id.*, p. 933, Exhibit "P-12-a".
[28] *Id.*, p. 934, Exhibit "P-13".
[29] *Id.*, p. 936, Exhibit "P-14".
[30] *Id.*, p. 936, Exhibit "P-14-a".
[31] *Id.*, p. 937, Exhibit "P-15".

On September 14, 2011, Vitalo filed a letter with Revenue District Officer Alcasabas refuting the findings against the alleged delinquency taxes.[32]

On October 14, 2011, Vitalo's request for reinvestigation was denied by Revenue District Officer Alcasabas and it was advised that the enforcement of collection of the assessed deficiency taxes through summary remedies would ensue. The letter used the Panorama Compound as Vitalo's address.[33]

On November 24, 2011, a Warrant of Distraint and/or Levy (WDL) was issued, again addressed to Vitalo at the Panorama Compound address.[34]

On December 23, 2011, Vitalo filed a letter with the Regional Director Jose N. Tan, requesting the cancellation of the WDL, FNBS and FAN for want of legal and factual basis.[35]

On September 3, 2012, Revenue District Officer Alcasabas issued a letter to Vitalo stating that the Legal Division, Revenue Region No. 9 denied the request for cancellation of the WDL, FNBS and FAN for lack of merit.[36]

On October 19, 2012, Vitalo wrote Revenue Region No. 9, requesting an administrative decision on the protest letter filed on December 23, 2011.

On November 5, 2012, a memorandum was issued by Regional Director Jose N. Tan informing Vitalo of the legal basis of the denial.[37]

On November 23, 2012, Vitalo filed an administrative appeal with the CIR.[38]

On December 9, 2015, Vitalo received the Decision of the CIR dated December 3, 2015 denying its appeal.[39]

Aggrieved, Vitalo filed its Petition for Review[40] with the Court on January 7, 2016.

[32] *Id.*, pp. 939-955, Exhibit "P-16".
[33] *Id.*, p. 956, Exhibit "P-17".
[34] *Id.*, p. 959, Exhibit "P-18".
[35] *Id.*, p. 978, Exhibit "P-20".
[36] *Id.*, pp. 960-977, Exhibit "P-19".
[37] *Id.*, pp. 979-983, Exhibit "P-22".
[38] *Id.*, pp. 984-1004, Exhibit "P-23".
[39] *Id.*, pp. 1036-1048, Exhibit "P-28".
[40] *Id.*, pp. 10-192.

On January 15, 2016, the Court in Division issued summons for the CIR who was ordered to submit an Answer to the Petition.[41] After requesting an extension,[42] which the Court granted,[43] the CIR filed his Answer[44] on April 11, 2016.

Pre-Trial commenced and both parties filed their respective Pre-Trial Briefs[45] and their Joint Stipulation,[46] which was approved and adopted in the Pre-Trial Order (PTO)[47] dated June 22, 2016.

Trial ensued and Vitalo presented its witnesses: Daniel Julaton[48], its Operations Manager/Director; Helen Herrera[49], its Finance Supervisor; Gemma Suazo[50], its Accounting Finance Assistant; and Atty. Adan Delamide[51], the court-commissioned Independent Certified Public Accountant (ICPA).

On October 27, 2016, Vitalo filed its Formal Offer of Evidence (FOE).[52] On December 13, 2016, the Court in Division resolved Vitalo's FOE.[53] Vitalo then filed a Motion for Reconsideration (Re: Resolution dated 13 December 2016). The Court in Division resolved the same by partially granting the motion.[54]

The CIR, on the other hand, presented his sole witness, Revenue Officer Wilma Enrique, on December 4, 2017.[55]

The CIR filed his FOE on June 19, 2018. The Court in Division admitted all of the CIR's exhibits, except Exhibits "R-2" and "R-11".[56]

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[41] *Id.*, p. 193.
[42] *Id.*, pp. 195-199.
[43] *Id.*, p. 200.
[44] *Id.*, pp. 213-227.
[45] *Id.*, pp. 231-246 and 247-252, respectively.
[46] *Id.*, pp. 272-282.
[47] *Id.*, pp. 774-782.
[48] *Id.*, p. 825.
[49] *Id.*
[50] *Id.*, p. 861.
[51] *Id.*
[52] *Id.*, pp. 879-909.
[53] *Id.*, pp. 1191-1193.
[54] *Id.*, pp. 1218 to 1220; Resolution amending the conflicting statement in the dispositive portion of the Resolution dated August 1, 2017, which both admitted and denied Exhibit "P-3128".
[55] *Id.*, p. 1252.
[56] *Id.*, pp. 1305-1306.

The case was submitted for decision on October 5, 2018[57], considering that Vitalo filed its Memorandum on August 23, 2018[58] and the CIR filed his Memorandum on September 24, 2018[59], after the Court granted[60] his Urgent Motion for Extension to File Memorandum[61].

On July 5, 2019, the Court in Division issued the assailed Decision[62], the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision of respondent dated December 3, 3015, the FLD/FAN dated April 15, 2010 and December 3, 2010, the PCL dated May 25, 2011, the FNBS dated August 12, 2011, and the Warrant of Distraint and/or Levy dated November 24, 2011 are hereby **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**

On July 22, 2019, the CIR filed his Motion for Reconsideration thereof. Vitalo responded by filing its Comment/Opposition *(to Respondent's Motion for Reconsideration)* on August 20, 2019.

On September 12, 2019, the Court in Division issued the assailed Resolution[63] which denied the CIR's motion for reconsideration for lack of merit.

Within an extended period of time[64] granted by the Court *en banc*,[65] the CIR timely filed his Petition for Review[66] with the CTA *en banc* on October 10, 2019.

On October 21, 2019, Vitalo was ordered to file its Comment thereto.[67]

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[57] Docket (Vol. IV), Resolution dated October 5, 2018, p. 1413.
[58] Docket (Vol. IV), pp. 1307-1385.
[59] Docket (Vol. IV), pp. 1392-1412.
[60] Docket (Vol. IV), Order dated August 31, 2018, p. 1391.
[61] Docket (Vol. IV), pp. 1386-1390.
[62] *Id.* at Note 2.
[63] *Id.* at Note 3.
[64] *Id.* at Note 1, pp. 1-5.
[65] *Id.*, p. 6.
[66] *Id.* at Note 4.
[67] *Id.*, pp. 78-79.

On October 31, 2019, Vitalo filed its Manifestation with Motion to File Comment,[68] indicating that it had not yet received a copy of the Petition and asking that the period within which to file its Comment be reckoned from the date of receipt of the Petition instead. This was granted by the Court in a Resolution dated November 18, 2019.[69]

On November 18, 2019, Vitalo filed its Comment/Opposition *(to the CIR's Petition for Review)*[70], after asking for an extension[71] which was granted[72] by the Court.

In a Resolution dated December 4, 2019[73], Vitalo's Comment was noted and the case was referred to mediation.[74] However, the parties decided not to have their case mediated by the Philippine Mediation Center Unit-CTA on January 20, 2020.[75]

On February 3, 2020, the case was submitted for decision.[76]

The Assignments of Errors

Petitioner CIR claims that the Special Second Division erred in ruling that the deficiency tax assessments are null and void for having been issued in violation of the due process requirements under the law.

The Arguments of the Parties

The CIR argues that the LOA No. 18873, Checklist of Requirements, Revalidation Notice, NIC, LOA No. 4547, PAN, FAN, Amended PAN, Amended FLD/FAN, PCL, and FNBS were validly issued and served on Vitalo, albeit at its old address at the Panorama Compound. Not only were they received by the same people who received the other notices; but also, Vitalo was able to protest and reply to the FLD, PCL, and the FNBS. Vitalo likewise admitted its receipt of the PAN during trial. This shows that the due process requirement has

[68] *Id.*, pp. 80-82.
[69] *Id.*, pp. 93-94.
[70] *Id.*, pp. 95-124.
[71] *Id.*, pp. 87-91.
[72] *Id.*, p. 125.
[73] *Id.*, pp. 127-128.
[74] In accordance with A.M. No. 11-1-5-SC-PHILJA dated January 18, 2011 issued by the Supreme Court, "Interim Guidelines for Implementing Mediation in the Court of Tax Appeals".
[75] *Id.* at Note 1, p. 129-132.
[76] *Id.*, p. 134.

been complied with since, its essence is giving the taxpayer an opportunity to be heard and to raise objections to government action.

Moreover, Sec. 3.1.6 of Revenue Regulations (RR) No. 18-2013 provides that that PAN/FLD/FAN/FDDA shall be served through personal service at the taxpayer's registered *or known* address which is where the NIC, PAN, and FLD were sent and actually received by Vitalo. Hence, Vitalo was never deprived of due process.

On the other hand, Vitalo asserts that in sending the assessment notices to its old address, despite proper registration with the BIR of its new address, the CIR failed to comply with the due process requirements prescribed under Section 228 of the NIRC and Section 3 of RR No. 12-99. Moreover, the notices sent were received by a security guard who was not an authorized representative of Vitalo who could receive notices on its behalf, nor was an employee of theirs, being the security guard of the new lessee at its old address. The CIR likewise failed to establish proof of receipt of the letters/notices sent through registered mail due to lack of authentication. Having failed to establish the actual receipt of the LOA, NIC, and PAN, the FAN/FLD, the assessments are void, and, consequently, the PCL, FNBS, and WDL cannot prosper.

The Ruling of the Court

The CIR's arguments fail to persuade.

The record shows that as early as 2008, Vitalo gave notice to the BIR that it changed its address from the Panorama Compound to its new address in Laguna Technopark in compliance with Section 11 of RR No. 12-85, which states:

> SECTION 11. *Change of Address.* - **In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business,** the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, **and <u>in case of failure to do so,</u> any communication referred to in these regulations previously sent**

> **to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.** *(Emphasis supplied)*

As stated above, if the taxpayer **fails to inform** the BIR of its change of address, any communication previously sent to its **former** legal residence or place of business **shall be considered valid and binding** for purposes of the period within which to reply. Conversely, **if the taxpayer does his duty and duly informs the BIR of its change of address**, then any communication sent to its old address **becomes invalid and tolls the period within which the taxpayer is given to reply**.

We uphold the finding of the Court in Division that the CIR was well-informed of the change of address of Vitalo. The evidence bears out that Vitalo updated its registration information[77] to reflect its new address. As early as 2006, petitioner already indicated Laguna Technopark as its registered address in its tax returns.[78]

Despite registering its Laguna Technopark address, the CIR sent all the notices in relation to the assessments - the first and second NICs, PAN, LOA No. 4754, FAN/FLD, Amended PAN, Amended FAN/FLD, PCL, FNBS, and WDL to Vitalo's **old address** at the Panorama Compound. This is even admitted in his Petition for Review.[79]

In justifying that his acts of sending notices to Vitalo's old address do not run afoul of the due process requirements, the CIR claims that this is allowed under RR 18-2013, which states:

> "3.1.6. Modes of Service - The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
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> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered **or known address or wherever he may be found**. A *known*

[77] *Id.* at Note 6, p. 912, Exhibits "P-2" and "P-108".
[78] *Id.*, pp. 1058 to 1088, Exhibits "P-33" to "P-43"; pp. 1093-1116, Exhibits "P-55" to "P-56"; pp. 1145-1169, Exhibits "P-62" to "P-73"; pp. 1133-1144, Exhibits "P-58" to "P-61"; and pp. 1170-1171, Exhibit "P-74".
[79] *Id.* at Note 1, p. 10.

> address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence." *(Emphasis supplied)*

However, Sec. 3.1.6 of RR 18-2013 - which amended RR 12-99 - cannot be relied upon by the CIR to justify service at Vitalo's "known address", the Panorama Compound address, simply because the said section relied upon was not yet in existence at the time the notices in question were served.

The record shows that the subject notices were served beginning with the NIC in 2009 through 2011 when the PCL, FNBS, and WDL were served. During that period, RR 12-99 delineated the due process requirements to be observed in issuing deficiency tax assessments, thus:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -
>
> 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 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. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default,

in which case, 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 with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 Preliminary Assessment Notice (PAN).- If after review and evaluation by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing 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 assessment notice shall be caused to be issued by the said Office, 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 Assessment Notice.- The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void (see illustration in ANNEX 8 hereof).
>
> **The same shall be sent to the taxpayer only by registered mail or by personal delivery.**
>
> If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

From the foregoing, it is apparent that the notices were required to be sent only by registered mail or personal delivery. The applicable rules at the time the notices were sent allowed for constructive service[80] wherein if the notice was sent by registered mail and no response was received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same was to be considered **actually or constructively** received by the taxpayer. However, this presumes that the notice was sent to the correct address. In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[81] where the FAN was sent to the wrong address, the Supreme Court reminds us that "one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation."

On this ground alone, the assessments issued by the CIR do not come up to standard. Vitalo, in legal fiction, never received any of the notices the CIR

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[80] Section 3.1.7 - Constructive Service. If the notice to the taxpayer -herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case.

[81] G.R. No. 198677, Nov. 26, 2014.

sent, actually or constructively, notwithstanding the fact that they were able to protest the PAN and FAN.

Moreover, as aptly observed by the Court in Division:

> "[W]hen service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the *registry receipt issued by the mailing office* and *an affidavit of the person mailing* of facts showing compliance with Section 13, Rule 13[82] of the 1997 Rules on Civil Procedure.[83] Absent one or the other, or worse both, there is no proof of service.[84] The original copies of the registry receipt or, in lieu thereof, the unclaimed notice and a certification from the postmaster of the issuance of notice, should be presented."

Among the findings of fact of the Court in Division is that the CIR failed to present a certification of the postmaster that the notice was duly issued and delivered to Vitalo such that service by registered mail would be deemed completed.[85] Furthermore, the signatures in the registry return receipts remained unidentified and unauthenticated.[86] Neither was it established that the signatures thereon belonged to Vitalo's authorized representatives.[87] The FAN, in fact, was received by the security guard of the new lessee of Vitalo's old premises at the Panorama Compound address and was not even Vitalo's employee. The record is likewise bereft of proof that SG Nacario E.J. or Mayanid were authorized to receive communication for and in behalf of Vitalo.[88]

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[82] RULE 13 - Filing and Service of Pleadings, Judgments and other Papers

Sec. 13. Proof of service

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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 personal 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 offfice. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.
[83] *Republic of the Philippines vs. Resins, Incorporated*, G.R. No. 175891, January 12, 2011.
[84] *The Government of the Phtlippines vs. Victoriano Aballe, et al./ Republic of the Phils. vs. Salvador Wee*, G.R. No. 147212, March 24, 2006.
[85] *Id.* at Note 1, p. 65.
[86] *Id.*
[87] *Id.*, p. 66.
[88] See Note 85.

In *Commissioner of Internal Revenue vs. SVI Technologies, Inc.*,[89] this Court noted that Section 3.1.4 of RR 12-99 requires that the FAN/FLD must be received by the taxpayer or its authorized representative and that the alleged receipt by a security guard of the FAN/FLD does not satisfy the due process requirement under RR 12-99 and Section 228 of the NIRC. Thus, if service to the security guard of a company is violative of due process for he has no authority to receive notices, what more if the notices are served to a security guard of a different company that has no connection whatsoever to the taxpayer?

In the relatively new case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[90] (August 24, 2020), the Supreme Court had occasion to emphasize the necessity of ascertaining the identity and authority of the individual receiving notices, thus:

> "In any event, the Court finds significant the fairly recent issuance by no less than the CIR himself of Revenue Memorandum Order No. (RMO) 40-2019 dated May 30, 2019, which prescribes the procedures for the proper service of assessment notices in accordance with the provisions of Section 3.1.6 of RR 18 -2013 RMO 40-2019 pertinently provides:
>
> 12. The Chief of the Assessment Division or the Head of the Reviewing Office shall maintain a record of all assessment notices that were issued with the following details:
> 12.1. Type of Assessment Notice (PAN/FLD/FAN/FDDA);
> 12.2. Assessment Notice Number, if applicable;
> 12.3. Date of Assessment Notice;
> 12.4. Name of Taxpayer;
> 12.5. Registered Address;
> 12.6. Mode of Service;
> 12.7. Date of Service;
> 12.8. Name of Taxpayer/Person who received the assessment notice;
> 12.9. Position/designation/relationship to the taxpayer, if not personally served to the taxpayer named in the assessment notice;
> 12.10. Address/place where the assessment notice was served/delivered in case the assessment notice was served in a place other than his registered address; and

[89] CTA EB Case No. 1304, May 24, 2016.
[90] G.R. No. 240729, August 24, 2020.

> 12.11. Status - Indicate whether the deficiency tax assessment is
> a. Paid;
> b. Unprotested; or
> c. Disputed.
>
> As can be gleaned above, a detailed record of all assessment notices issued by the CIR is required. Notably, among the details to be recorded by the Chief of the Assessment Division or the Head of the Reviewing Office are the *'[n]ame of [t]axpayer/ [p]erson who received the assessment notice'* and, more importantly, the *'[p]osition/ designation/ relationship to the taxpayer, if not served to the taxpayer named in the assessment notice.'*
>
> While RMO 40-2019 was not yet in force at the time the questioned PAN and FAN in the case were issued, **the fact of such subsequent issuance of RMO 40-2019 by the CIR gives the Court all the more reason to affirm, if only for consistency and uniformity, the CTA *En Banc's* finding that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent. Here, the CIR failed to identify and authenticate the signatures appearing on Registry Receipt Nos. 5187 and 2581 for the purpose of ascertaining whether such signatures were those of respondent' s authorized representatives.** Hence, it is readily apparent that the CIR could not have complied with the requirement of noting the position/designation/relationship of Mr. B. Benitez, the recipient, to respondent, the taxpayer." *(Emphasis supplied)*

Observance of Due Process is Necessary for Valid Assessments

At this juncture, it must perforce be said that assessments issued by the BIR that fail to comply with due process requirements are void.

Section 228 of the Tax Code provides the due process requirements in the issuance of a deficiency tax assessment, as follows:

> **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: ...

x x x x x x x x x

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

Within a period to be prescribed by the 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. x x x *(Emphasis supplied)*

The "rules and regulations" referred to in the above-quoted provision refer to Section 3 of RR 12-99, as discussed earlier, which has since been amended by RR 18-2013[91].

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[92] case, the Supreme Court had this to say:

"The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable.

x x x x x x x x x

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' **This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**

On the other hand, <u>the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.</u> Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is

[91] Amended Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.
[92] G.R. Nos. 201398-99, October 3, 2018.

given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

x x x x x x x x x

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations." *(Emphasis supplied; citations omitted)*

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor.[93] Due process requires that it must be served on and received by the taxpayer.[94]

In order to comply with the due process requirements in the assessment and collection of taxes, the twin components of proper service and actual receipt must concur. One cannot be had without the other. The BIR must halt the pernicious practice of sending notices to the wrong address, especially since the taxpayer followed the stringent directives -- mandated by no less than the CIR himself -- of informing the BIR of its new address where notices ought to be sent. Otherwise, the taxpayer is put at a disadvantage from the beginning of the tax collection process, negating the mutual respect for the norms of fair play that due process requires.

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[93] *Commissioner of Internal Revenue v. Yukon General Manpower Services Corp.*, CTA EB No. 1444, July 24, 2017

[94] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

The fact that Vitalo was able to protest the FAN is of no moment, especially considering that the FAN came upon its hands only through the goodwill of the new lessee of its old premises in forwarding the mail matter. The stringent requirements of due process were not concocted to rely on such serendipitous occurrences. It is clear, that in protesting the FAN that it received by chance, Vitalo merely wanted to preserve its rights and remedies to abort an unjust collection of taxes powered by the gargantuan machinery of the State. This act must not be taken against it, and, more importantly, it cannot serve to negate the fault of the CIR in improperly serving the notice.

Considering that not only were all the notices sent to the wrong address, but also that they were not proven by the CIR to have been received by the taxpayer or his authorized representative, the assessments are void for lack of due process. Consequently, since an invalid assessment bears no valid fruit, the subsequent issuances of the CIR, *i.e.*, the PCL, FNBS, and the WDL, are likewise void.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.[95] In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[96]

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, as it has here, that the law has not been observed.[97]

The Court, therefore, sees no error committed by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated July 5, 2019 of the Second Division and

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[95] Section 1, Article III, 1987 Constitution.
[96] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[97] *Commissioner of Internal Revenue vs. Algue, Inc. and The Court of Tax Appeals,* G.R. No. L-28896, February 17, 1988.

the Resolution dated September 12, 2019 of the Special Second Division in CTA Case No. 9231 are **AFFIRMED.** Further, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from taking any further action against respondent Vitalo Packaging International, Inc. arising from Assessment Notice No. 57/2006 for calendar year 2006.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO- SAN PEDRO
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2148** (CTA Case No. 9231)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
VITALO PACKAGING INTERNATIONAL, INC., *Respondent.*	Promulgated: FEB 03 2021 11:35 a.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

In addition to the points discussed in the *ponencia* which led to the denial of the Petition for Review, I humbly submit that the Formal Letter of Demand (FLD) and Assessment Notices (FAN) dated April 15, 2010 are null and void for having been issued before the lapse of the fifteen (15)-day period within which respondent may reply to the Preliminary Assessment Notice (PAN) dated March 22, 2010.

Pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 3.1.2 of Revenue Regulations (RR) No. 12-99, as amended, a taxpayer shall be required to respond to the PAN within fifteen (15) days from receipt thereof. Upon the lapse of the 15-day period, the taxpayer is considered in default and the Bureau of Internal Revenue (BIR) shall issue a formal letter of demand and assessment notice.

Records reveal that the PAN dated March 22, 2010 was received by the security guard in respondent's old address on April 8, 2010; respondent learned about the PAN on the same day. [1] Assuming that the service of the PAN was valid, respondent had fifteen (15) days from April 8, 2010 or until April 23, 2010 within which to reply to the PAN.

As aforestated, **the BIR prepared the FLD and FAN on April 15, 2010 or barely seven (7) days after respondent received the PAN**. Evidently, the BIR did not wait for respondent to reply to the PAN within the fifteen (15)-day period.

The right of the taxpayer to respond to the PAN is an important part of due process. In wantonly disregarding respondent's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated respondent's right to due process. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[2] the Supreme Court declared in no uncertain terms that **<u>the failure of the CIR to strictly comply with the requirements laid down by law and its own rules</u>** is a denial of Metro Star's right to due process. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.

In view of the palpable violation of respondent's right to procedural due process, the FLD and FAN - - being fatally infirm - - should be considered void.

All told, I **CONCUR** with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] Judicial Affidavit of Ms. Gemma Suazo, Division Docket, p. 352.
[2] G.R. No. 185371, December 8, 2010.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

VITALO PACKAGING INTERNATIONAL, INC.,
Respondent.

CTA EB NO. 2148
(CTA Case No. 9231)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 03 2021 11:35 a.m.

x - x

CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the Decision which denied the Petition for Review filed by the Commissioner of Internal Revenue (**petitioner/CIR**) on the ground that the assessments are void for failure to comply with the due process requirements prescribed under Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Section 3 of Revenue Regulation (**RR**) No. 12-99 in sending all the notices to the wrong address and in failing to prove that they have been received by Vitalo Packaging International, Inc. (**respondent/VPII**) or any of its representatives.

Aside from the fact that, as early as 2008, respondent gave notice of its change of registered office address from Bldg. 1, Panorama Compound, LIIP, 4024, Biñan, Laguna (**Panorama Compound**) to Lot 1-B, No. 118, Phase 5 East Main Avenue, Laguna Technopark, Phase V, Biñan, Laguna (**Laguna Technopark**) by filing its Application for Registration Information

Update (BIR Form 1905)[1] and was issued a Certificate of Registration[2] reflecting its new registered address, the records disclose that respondent likewise consistently indicated in the various forms/returns[3] it submitted to the Bureau of Internal Revenue (**BIR**) in 2006 that its registered address is at Laguna Technopark.

Notwithstanding that petitioner was well-informed of respondent's change of address, petitioner still sent all the notices in relation to the assessment to respondent's old address (*i.e.*, Panorama Compound).

In this regard, I agree that, in sending the notices to the wrong address, petitioner's assessment never attained finality as respondent never received it, either actually or constructively. As such, petitioner should have been more circumspect in the issuance of the assessment notices especially considering that "one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed".[4]

Moreover, it is noteworthy that respondent, in its Letter to the BIR dated 14 September 2011[5], categorically claimed that it did not receive the Final Assessment Notice (**FAN**) and it only came to know of such when the Preliminary Collection Letter (**PCL**) dated 25 May 2011 was forwarded from respondent's old address (*i.e.*, Panorama Compound) to its new address (*i.e.*, Laguna Technopark).

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[6] (**Barcelon**), the Supreme Court has held that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to the BIR to prove by contrary evidence that the taxpayer received the assessment in the due course of mail.

Considering that petitioner failed to show any proof of mailing, registry receipt or acknowledgment receipt (signed by the respondent or any of its representatives) in regard to the FAN, there is a clear violation of respondent's right to procedural due process and, on this score, the assessment should be declared null and void.

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[1] Exhibit "P-2", Division Docket, Volume III, p. 912.
[2] Exhibit "P-3", id., p. 913.
[3] Exhibits "P-32" to "P-74", id., pp. 1056-1178.
[4] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, 26 November 2014.
[5] Exhibit "P-16", Division Docket, Volume III, pp. 939-955.
[6] G.R. No. 157064, 07 August 2006.

With the foregoing, I vote to **DENY** the instant Petition for Review.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice