REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MINDANAO SANITARIUM AND HOSPITAL, INC., Petitioner,	**CTA CASE NO. 8700**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 08 2016 9:55 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This Petition for Review filed by Petitioner Mindanao Sanitarium and Hospital, Inc., seeks to set aside the warrant of distraint and levy dated July 23, 2013 and to cancel the deficiency tax assessments on income, Value Added Tax, withholding tax on compensation and expanded withholding tax in the total amount of ₱2,897,610.48, issued by respondent Commissioner of Internal Revenue.

THE FACTS

Petitioner Mindanao Sanitarium and Hospital, Inc. is a non-stock, non-profit charitable institution organized and existing under the laws of the Republic of the Philippines, with principal office at National Highway, San Miguel, Iligan City.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 7, 2010, respondent issued Letter of Authority No. 00017549[2] to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2009 to December 31, 2009. On August 15, 2011, respondent issued a Notice for Informal Conference.[3]

On September 24, 2012, respondent allegedly issued through registered mail[4] a Preliminary Assessment Notice (PAN)[5] against petitioner. Said PAN was received by a certain Mr. Edpalina on October 17, 2012.[6] However, petitioner denies due receipt thereof.[7]

Consequently, respondent sent to petitioner a Formal Letter of Demand (FLD) and Assessment Notices all dated October 17, 2012, finding petitioner liable to pay deficiency income tax (₱25,118.44), Value Added Tax (VAT) (₱35,975.31), Withholding Tax on Compensation (WTC) (₱20,429.19) and Expanded Withholding Tax (EWT) (₱2,816,087.55), in the aggregate amount of ₱2,897,610.48.[8] Petitioner received the FLD and Assessment Notices on November 5, 2012.[9]

On November 29, 2012,[10] petitioner filed a Letter Request for Reconsideration against said assessments. Meanwhile, petitioner emphasized in the said letter that it is not requesting for reinvestigation.[11] On December 11, 2012, respondent issued a Reply

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[1] Par. 6, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 243.
[2] Par. 2, Summary of Admitted Facts, JSFI, p. 242; Exhibit "R-3", BIR Records, p. 362.
[3] Exhibit "R-5", BIR Records, p. 386.
[4] Exhibit "R-6-1", BIR Records, p. 452.
[5] Exhibit "R-6", BIR Records, p. 451.
[6] Exhibit "R-6-1", BIR Records, p. 452.
[7] Par. 9, Facts of the Case, Petition for Review, Docket, p. 15.
[8] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 242.
[9] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 242.
[10] Exhibit "P-7-1", Docket, p. 271.
[11] Exhibit "P-7-6", Docket, p. 272.

Letter[12] to petitioner requiring it to present the necessary documents within sixty (60) days from filing of the Letter Request.

On July 25, 2013, respondent issued to petitioner a Warrant of Distrant and/or Levy dated July 23, 2013.[13] Hence, on August 22, 2013,[14] petitioner filed the instant Petition for Review. Meanwhile, on September 13, 2013 and October 2, 2013, petitioner filed its Motion to Suspend Collection of Taxes[15] and Amended Motion to Suspend Collection of Taxes,[16] respectively. Said motions were granted by the Court on October 17, 2013.[17]

In her Answer,[18] respondent raised the following pertinent Special and Affirmative Defenses:[19]

"SPECIAL & AFFIRMATIVE DEFENSES

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ARGUMENTS & DISCUSSIONS

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16. As regard the *Preliminary Assessment Notice with Attached Details of Computation and Details of Discrepancies* ('PAN' for brevity) dated 24 September 2012, respondent sent the same through registered mail and duly received by petitioner on 17 October 2012 as evidenced by **Registry Return Card no. 14382**. Moreover, the person who signed the registry return card for the PAN was the same person who received and signed the registry return card (**Registry Return Card no. 14437**) for the Formal Letter of Demand (FLD) with attached Assessment Notices. It bears stressing that, petitioner did not dispute having received the FLD and as a matter of fact, petitioner acknowledges receipt of the FLD with the attached Assessment Notices in its Petition.

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[12] Exhibit "R-10", BIR Records, pp. 469-470.
[13] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 242.
[14] Petition for Review, pp. 14-18.
[15] Docket, pp. 42-43.
[16] Docket, pp. 66-71.
[17] Resolution, Docket, pp. 102-105.
[18] Docket, pp. 112-133.
[19] Id., pp. 113-131.

<u>Income Tax</u>

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29. In the case at hand, records readily reveal that the deficiency income tax of petitioner was derived from the rental income from doctors, rental income paid by Globe Telecom and gains from sale of its fixed assets. Thus, the rental income and gain on sale of fixed assets in the total amount of P165,432.63 are subject to corporate income tax under Section 27(B) of the Tax Code since the same were derived from activities conducted for profit.

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<u>Value-Added Tax</u>

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38. Also, petitioner contends, in its protest letter, that the said income is tax exempt because the alleged revenue of Php165,432.63 does not exceed the Php1,500,000 VAT threshold pursuant to Section 109 of the Tax Code.

Respondent begs to disagree.

39. On the contrary, records disclose that the petitioner was **VAT-registered**, accordingly, any taxable sale shall be subject to tax under sections 106 and 108 of the Tax Code. Anent the foregoing, there is no need for the total vatable sale/receipts to exceed Php1,500,000 threshold, considering that any person who is VAT exempt under Section 109(1) of the Tax Code but opted to register under the VAT system shall be liable to output tax pursuant to R.R. 16-2005, otherwise petitioner would have been liable for percentage tax if it were not VAT-registered.

<u>Expanded Withholding Tax</u>

40. With respect to petitioner's expanded withholding tax deficiency, records disclose that upon audit by the revenue examiners of the withholding tax on

the income payments made to medical practitioners, it was found that the petitioner used the withholding rate of **ten percent (10%)** instead of using the **fifteen percent (15%).**

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Withholding Tax on Compensation

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45. However, a scrutiny of the records and the computational details patently reveals that there was a discrepancy between the tax allegedly withheld and the amount actually remitted. Based on petitioner's alphalist, the total tax due and withheld from its employees amounted to **Php2,069,405.04**; this is in contrast with petitioner's payment forms and receipts which only totaled to **Php2,056,373.49**, thereby resulting in an under-remittance of Php13,031.55.

Petitioner has been given ample opportunity to present its side in the administrative proceedings. However, it failed to file relevant supporting documents to bolster its protest.

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48. In the instant case, petitioner failed to submit its supporting documents in order to substantiate its protest upon the assessment. Respondent likewise points out that a perusal of the records reveal that there were no supporting documents filed at all, In the end, if petitioner did actually submit the documents necessary to substantiate its claim, then it could have declared so in its petition.

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53. Petitioner bypassed its administrative remedy, and it is only now at the judicial stage, before this Honorable Court, that petitioner submits and proposes to present documentary evidence allegedly disputing the assessment against it. Respondent respectfully submits that this should not be allowed as this pernicious practice contravenes the well-settled principle that matters not

preliminarily raised in the administrative level cannot be raised for the first time upon appeal.

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On March 24, 2014, the parties filed their Joint Stipulation of Facts and Issues.[20] On March 31, 2014, the Court issued the Pre-Trial Order.[21]

During trial, petitioner presented the following witnesses: Mr. Enrino P. Panes[22] – petitioner's Vice-President for Finance, and Ms. Myrna P. Legaspino[23] - petitioner's Director for Human Services and Acting Corporate Secretary. Petitioner likewise filed its Formal Offer of Evidence[24] on June 3, 2014.

On the other hand, respondent presented witnesses Ms. Ayres Floran L. Capitan[25] – Revenue Officer I of the BIR, Ms. Ronalene Joy B. Achas[26] – also a Revenue Office I of the BIR, and Ms. Maria Flor Desoma[27] – employee of Philippine Postal Corporation whose testimony was taken through deposition upon oral examination. Respondent filed her Formal Offer of Evidence[28] on March 16, 2015.

On April 30, 2015, the Court issued a Resolution[29] requiring the parties to submit their memoranda, among others. Petitioner filed its Memorandum[30] on June 30, 2015 while respondent filed his Memorandum[31] on July 28, 2015. On November 25, 2015,[32] the Court issued a Resolution submitting the instant case for decision.

Hence, this Decision.

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[20] Docket, pp. 242-244.
[21] Docket, pp. 246-250.
[22] Exhibit "P-5", Docket, pp. 262-266.
[23] Exhibit "P-6", Docket, pp. 267-270.
[24] Docket, pp. 260-261.
[25] Exhibit "R-11", Docket, pp. 818-821.
[26] Exhibit "R-12", Docket, pp. 832-835.
[27] Exhibit "R-15", Docket, pp. 872-881.
[28] Docket, pp. 907-923.
[29] Docket, pp. 942-945.
[30] Docket, pp. 958-966.
[31] Docket, pp. 1008-1031.
[32] Docket, p. 1081.

THE ISSUES

The parties presented the following issues to be resolved by the Court:

"ISSUES FOR THE PETITIONER

1. Whether petitioner received the Preliminary Assessment Notice (PAN).

2. Whether the 2009 tax assessments have factual and legal bases.

3. Whether petitioner failed to submit the supporting documents necessary to refute the findings of the revenue officers examiners within the statutorily mandated sixty (60)-day period.

4. Whether petitioner was denied due process.

ISSUES FOR THE RESPONDENT

1. Whether petitioner failed to interpose a timely protest upon receipt of the Preliminary Assessment Notice issued against it.

2. Whether petitioner failed to submit the supporting documents necessary to refute the findings of the revenue examiners, within the statutorily mandated sixty (60) day period.

3. Whether petitioner is liable for deficiency income tax, deficiency value-added tax, deficiency expanded withholding tax and deficiency withholding tax on compensation for calendar year 2009 in the total amount of Php2,897,610.49 including surcharge, deficiency and delinquency interest."[33]

Essentially, the Court is presented with the following issues: (1) Whether petitioner duly received the PAN; (2) Whether the Court has jurisdiction to entertain and determine the correctness of the assessments; and (3) If the Court has jurisdiction to determine the

[33] JSFI, Docket, p. 243.

correctness of the assessment, whether petitioner is liable for deficiency income tax, VAT, WTC and EWT.

THE RULING

Petitioner duly received the PAN

The Court shall first rule on the preliminary issues which are essential in the determination of its jurisdiction to entertain and determine the correctness of the subject assessments.

Petitioner asserts that the person who received the PAN was not authorized to receive the same. Petitioner's witness, Ms. Myrna P. Legaspino, testified that:

> "6. Does Mr. Edpalina's duties and responsibilities include receiving official communications and notices coming from government offices like the BIR and addressed to the President of MSH as in the case of Preliminary Assessment Notice (PAN).
>
> A. *No Sir. His duties and responsibilities and even his job description do not include receiving official communications and notices from government and private offices like PAN coming from the Bureau of Internal Revenue. He is not authorized to do that.*
>
> 7. Q. If Mr. Edpalina is not authorized to receive the notices, then who in MSH is authorized to do so?
>
> A. *The Secretary of the MSH President is authorized to do so."*[34]

On cross-examination, Ms. Legaspino testified that:

"ATTY. SOMERA

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[34] Exhibit "P-6", Docket, p. 268.

Q As H.R. as director of the Human Resource Department, are you aware of any personnel authorized to receive mail matters?

A It's the Secretary of the President.

Q So you would allow the postman and enter the premises and have it received by the Secretary of the company?

A **Sometimes** it is personally taken by the Secretary of the President."[35] *(Emphasis supplied)*

On the other hand, to prove due receipt of the PAN by petitioner, respondent presented before this Court the relevant Registry Return Receipt.[36] Respondent also presented a Certification[37] from the Office of the City Postmaster of Iligan City that Registered Letter No. 14382[38] was signed and received by Mr. Dan Edpalina on October 17, 2012. Respondent likewise presented Ms. Maria Flor Desoma to prove that she issued the said Certification and that Mr. Edpalina received the subject PAN. In her Deposition upon Oral Examination, she testified that:

"Atty. Naputo – In your certification he is an authorized representative, so she is knowledgeable of the fact that Mr. Edpalina is authorized, now try her to explain. What is your proof when you said that Mr. Edpalina is an authorized representative of Mindanao Sanitarium & Hospital? Do you have any written document to prove that?

Ms. Desoma - It is Menchie Claveria who is authorized?

Atty. Naputo - This is the authority of Mr. Claveria, authorizing you?

Atty. Galera - No, it state the fact of receipt that they said they received the letter. ℊ

[35] Transcript of Stenographic Records (TSN) dated May 19, 2014, pp. 8-9.
[36] See Note 4.
[37] Exhibit "R-13", Docket, p. 924.
[38] See Note 4.

Atty. Naputo	-	Does it says here that Mr. Edpalina is authorized? Nothing here mentioned about the authority. My question here again I repeat is Mr. Dan Edpalina is the authorized representative of Mindanao Sanitarium & Hospital? Did you receive any? Before September 11, 2013, any document that she is authorized. If you do not have, just be honest. Just say No or Yes?
Ms. Desoma	-	No, because at that time in 2012, I am not in charge.
Atty. Naputo	-	In short you did not see any written authority from Mindanao Sanitarium & Hospital from Mr. Dan Edpalina to receive the same.
Atty. Galera	-	The same objection.
Ms. Desoma	-	Yes Sir.
Atty. Naputo	-	Thank you. In 2012 – October 2012 who was in charge of the registered mails?
Ms. Desoma	-	That was Myrna Blanco.
Atty. Naputo	-	Not you?
Ms. Desoma	-	Not me. She already retired last 2013.
Atty. Naputo	-	So, you have no personal knowledge? That on October 12, 2012 and October 24, 2014 as well as on October 17 and November 5, 2012, those dates 2012, You have no personal knowledge that Mr. Edpalina was clothed or equipped with a written authority to receive registered mails of

Mindanao Sanitarium and Hospital because you were not yet assigned?

Ms. Desoma - Yes sir, I am not yet assigned.

Atty. Naputo - thank you.

Atty. Limpangog - Do you want to redirect Atty. Galera?

Atty. Galera - So in your certification, what was the basis of your certification? Where did you base your certification as to the received of Mr. Edpalina?

Ms. Desoma - In the record of Myrna Blanco that I have now.

Atty. Galera - So you based your certification in the records of your office.

Ms. Desoma - Yes, Sir."[39]

From the foregoing, petitioner through witness Ms. Legaspino, showed that Mr. Edpalina – the person who received the PAN, is petitioner's employee. However, she also testified that Mr. Edpalina, while being one of petitioner's employees, is not fully clothed with authority to receive the PAN on behalf of petitioner. The same fact was elicited from Ms. Desoma's Deposition upon Oral Examination.

Section 228 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), pertinently provides:

"**SEC. 228. Protesting of Assessment**. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:

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[39] Exhibit "R-15", Docket, pp. 877-879.

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

In relation thereto, Section 3.1.2 of Revenue Regulations No. 12-99 (RR 12-99) provides:

> "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 law, rules and regulations, or jurisprudence on which the proposed assessment is based** xxx 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."*(Emphasis supplied)*

Section 228 of the NIRC of 1997, as amended, provides the rule that PAN is required as part of the due process rights of a taxpayer. Corollary thereto, Section 3.1.2 of RR No. 12-99 provides that the service of PAN to the taxpayer may be made at least by registered mail.

With respect to the service of PAN by registered mail, the Supreme Court explained in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*,[40] that:

> "In *Protectors Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section

[40] G.R. No. 157064, August 7, 2006.

> 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**. xxx"*(Emphasis supplied)*

Records reveal that the PAN was indeed mailed by respondent to petitioner as evidenced by the Registry Return Receipt.[41] The question that remains is whether the letter was properly addressed with postage prepaid.

A close scrutiny of the Registry Return Receipt[42] in connection with the subject PAN reveals that the mail matter was addressed to "Mindanao Sanitarium & Hospital, Inc." which, undoubtedly, pertains to petitioner. The Registry Return Receipt also contains a note in its lower portion which significantly reads:

> "A registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."

The note set forth in the registry return receipt instructs that the registered article must not be delivered to anyone but the addressee, the petitioner in this case. Based on the evidence presented, the PAN was indeed delivered to petitioner pursuant to the instruction stated in the registry return receipt. However, as discussed earlier, the controversy lies on whether Mr. Edpalina who received the PAN has no authority to receive the same.

In *Scenarios Inc. and/or Rhotziv Bago v. Jelly Vinluan*[43] involving a labor case, petitioners therein assert that the summons and notices issued by the Labor Arbiter were not served on any of its authorized officers or agents and therefore, violative of their right to due process. In rejecting petitioner's contention, the Supreme Court found that:

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[41] See Note 4.
[42] Id.
[43] G.R. No. 173283, September 17, 2008.

"The records furthermore indicate that petitioners had been furnished a copy of the decision of the labor arbiter. As indicated in the certification issued by the Quezon City Central Post Office, a notice of judgment/decision was served by registered mail on petitioners, delivered on 5 June 2001 and received by a certain S/G Cuevas.

Turning to another point, there is enough evidence showing that petitioners had been duly notified of the hearings and of the decision. **The postal office certifications are *prima facie* proof that the said processes had been delivered to and received by petitioners. The presumption of regularity in the performance of official duty stands. It is incumbent upon petitioners to prove otherwise, a task which they failed to do**.

Moreover, despite petitioners assertion that the summons and notices had not been served on any of the authorized officers or agents of the corporation, they do not however deny that the same had been properly sent to their business address. In fact, even the writ of execution was served at the very same address written on the summons, notices and decision. Technical rules of procedure are not strictly applied in quasi-judicial proceedings; only substantial compliance is required. The constitutional requirement of due process exacts that the service be such as may reasonably be expected to give the notice desired. Petitioners' bare assertion that the notices had not been received requires substantiation by competent evidence, as mere allegation is neither equivalent to proof nor evidence. **Besides, the registry return receipt states that a registered article must not be delivered to anyone but the addressee, or upon the addressees written order. Thus, the persons who received the notice are presumably able to present a written authorization to receive the same and we can assume that the notices are duly received in the ordinary course of events. It is a legal presumption, born of wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have**

> **been and will be duly and properly performed. Whether or not petitioners deliberately ignored the summons and notices or whether those who actually received the same failed to show petitioners the summons and notices due to lack of instruction or out of negligence is no longer important to us.** The registry return receipt for the summons marked UNCLAIMED and the certifications from the Quezon City Central Post Office that two of the notices and a copy of the decision had been delivered to and received in the premises of petitioners office are, under the prevailing rules, enough to convince us that service of said processes and decision was completed."[44] *(Emphasis supplied)*

In *Land Bank of the Philippines v. Heirs of Fernando Alsua*,[45] the trial court denied petitioner's motion for reconsideration for being filed one day late, among others. Petitioner therein elevated the matter before the Court of Appeals and argued that the copy of the order of dismissal should be deemed received upon delivery to petitioner's counsel on 12 December 2002 and *not upon receipt by petitioner's guard* on duty on 11 December 2002. Ruling against petitioner, the Supreme Court held that:

> **"All that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the same to the addressee himself or to a person of sufficient discretion to receive the same.**
>
> **Thus, in prior cases, a housemaid, or a bookkeeper of the company, or a clerk who was not even authorized to receive the papers on behalf of its employer, was considered within the scope of a person of sufficient discretion to receive the registered mail. The paramount consideration is that the registered mail is delivered to the recipients address and received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney.**

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[44] Id., citing *Toyota Cubao, Inc. v. CA*, 346 Phil. 181, 188 (1997), citing *Boticano v. Chu, Jr.*, 148 SCRA 541; and *Masagana Concrete Products v. NLRC*, 372 Phil. 459, 472 (1999).
[45] G.R. No. 167361, April 2, 2007.

In the instant case, the receipt by the security guard of the order of dismissal should be deemed receipt by petitioner's counsel as well.

Petitioner's admission that there were instances in the past when the security guard received notices for petitioner LBP only underscores the fact that the security guard who received the order of dismissal fully realized his responsibility to deliver the mails to the intended recipient. Noteworthy also is the fact that the security guard did not delay in handing over the order of dismissal and immediately forwarded the same to petitioner's counsel the following day. Petitioner has only itself to blame if the security guard took it upon himself to receive notices in behalf of petitioner and its counsel despite lack of proper guidelines, as alleged by petitioner. In *NIAConsult, Inc. v. NLRC*, the Court pointed out that it was the responsibility of petitioners and their counsel to devise a system for the receipt of mail intended for them. The finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of a party."[46]

Guided by the foregoing jurisprudence and the evidence presented by the parties, the Court rules that petitioner duly received the PAN based on the following:

First, the PAN was sent to the proper addressee of the mail matter which, in this case, is petitioner. Thus, the PAN was properly served to petitioner's address pursuant to *Scenarios Inc.* case.

Second, Mr. Edpalino being one of the purchasing staff and driver of petitioner,[47] is considered as a person having sufficient discretion to receive the subject registered mail, as in the case of a security guard, housemaid, bookkeeper or clerk in *Landbank* case.

Third, petitioner's witness, Ms. Legaspino, testified that mail matters are **sometimes**, taken personally by the secretary of petitioner's President. In other words, it is not solely the secretary or

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[46] Id., citing *Laza v. Court of Appeals*, 336 Phil. 631 (1997); *Pabon v. NLRC*, 357 Phil. 7 (1998); *G&G Trading Corporation v. Court of Appeals*, No. L-78299, 29 February 1988, 158 SCRA 466; and G.R. No. 108278, 2 January 1997, 266 SCRA 17.

[47] See Note 34, pars. 4-5, Docket, p. 268.

an authorized person, who personally receives mail matters on behalf of petitioner. There are instances where another person, *i.e.*, petitioner's employees, receives mail matters on behalf of petitioner, as what Mr. Edpalina did in this case.

Finally, it was duly proved that Mr. Edpalina received the subject PAN. Further scrutiny of the records shows that Mr. Edpalina likewise received[48] the FLD and the Assessment Notices. During the cross-examination of respondent's witness Ms. Desoma, petitioner failed to question whether it was Mr. Edpalina who, in fact, received the PAN, the FLD and the Assessment Notices. What petitioner merely questioned is the authority of Mr. Edpalina to receive mail matters.

Considering that petitioner was able to receive and respond to the FLD and Assessment Notices that were received by Mr. Edpalina, it is amusing how petitioner could not have been able to receive the subject PAN that was also received by Mr. Edpalina. Moreover, petitioner lacks a system for receipt of mail matters. The postmaster, or any third person for that matter, could not have known the person whom petitioner authorized to receive mail matters if it has not made said information available. Hence, the Court rules that petitioner duly received the PAN.

The Warrant of Distraint and/or Levy is not the FDDA appealable to the Court

Before the Court could proceed to determine whether the Petition was timely filed, the Court shall first rule whether the Warrant of Distraint and/or Levy issued in this case is the Final Decision on Disputed Assessment (FDDA) that is appealable before this Court.

Again, Section 228 of the NIRC of 1997, as amended, pertinently provides:

> "**SEC. 228. Protesting of Assessment.** – xxx
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> xxx xxx xxx

[48] Registry Receipt No. 14437 attached to Assessment Notice, BIR Records, p. 460.

> 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.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In the instant case, petitioner received the FLD and Assessment Notices on November 5, 2012.[49] Under Section 228 of the NIRC of 1997, as amended, petitioner had 30 days from November 5, 2012, or until December 5, 2012, within which to file its protest. Petitioner filed its protest on November 29, 2012,[50] or within the 30-day period to file the same.

On December 11, 2012, respondent issued a letter requiring petitioner to submit documents.[51] Allegedly without issuing an FDDA, respondent instead issued a Warrant of Distraint and/or Levy on July 25, 2013.[52] Consequently, on August 22, 2013, petitioner filed the subject Petition.

In *Advertising Associates, Inc. v. Court of Appeals*,[53] the BIR issued Warrants of Distraint against petitioner. Subsequently, petitioner wrote a letter to the BIR requesting for the cancellation of

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[49] See Note 9.
[50] See Note 10.
[51] See Note 12.
[52] See Note 13.
[53] G.R. No. L-59758, December 26, 1984.

the assessments and for the withdrawal of the Warrants of Distraint. In reply thereto, the CIR sent a demand letter informing petitioner that it is the BIR's final decision. In determining whether the appeal was timely filed, the Supreme Court considered the date when the final demand letter was issued and not the date of the Warrants of Distraint.

In *Commissioner of Internal Revenue v. Algue, Inc.,*[54] a Warrant of Distraint and Levy was issued to the taxpayer without ruling on its request for reconsideration. The Supreme Court held that while, as a rule, the Warrant of Distraint and Levy is proof of finality of the assessment and is tantamount to an outright denial of the request for reconsideration, the issuance of the Warrant of Distraint and Levy in that case was not deemed a denial of the request. The Supreme Court found that said request cannot be found in the records and the BIR cannot be presumed to have taken it into consideration.

In *Commissioner of Internal Revenue v. Union Shipping Corp.,*[55] the BIR issued a Warrant of Distraint and Levy after respondent filed a request for reconsideration. The Supreme Court held that the BIR should always indicate to the taxpayer in clear and unequivocal language what constitutes a final action on a disputed assessment. Consequently, the Supreme Court declared that considering the failure of the CIR to clearly signify his final action on the disputed assessment, the period to appeal has not commenced to run. As such, the Supreme Court adopted its ruling in *Advertising Associates* case. Interestingly, it was held that the period to appeal commenced to run only at the time when respondent received the summons on the civil case initiated by the BIR for collection of deficiency income.

In *Commissioner of Internal Revenue v. Isabela Cultural Corporation,*[56] the BIR issued a Final Notice Before Seizure after respondent filed its request for reconsideration. The Supreme Court held that the Final Notice Before Seizure is tantamount to a denial of respondent's request for reconsideration because the tenor thereof indicates that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.

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[54]G.R. No. L-28896, February 17, 1988.
[55] G.R. No. L-66160, May 21, 1990.
[56] G.R. No. 135210 July 11, 2001.

Advertising Associates and *Isabela Cultural* instructs that to be considered an FDDA, be it in the form of a demand letter or a Final Notice Before Seizure, it must be couched in clear and unequivocal language that it is the final action on the disputed assessment. In *Union Shipping*, the Supreme Court reiterated the said doctrine, but treated the judicial action for collection instituted by the BIR as the FDDA. In *Algue*, the Supreme Court declared that the general rule is that the warrant of distraint and levy is the proof of finality of the assessment. However, the Supreme Court did not apply the said rule because the request for reconsideration cannot be found which could have been the basis for the issuance of the warrant of distraint and levy.

Guided by the foregoing jurisprudence, the Court subscribes to the latest ruling in *Isabela Cultural*, which reiterated the doctrines laid down in *Advertising Associates* and *Union Shipping*. Apparently, the pertinent doctrine laid down in *Algue* abandoned the earlier ruling in *Advertising Associates*, but the *Algue* ruling was later on abandoned in *Union Shipping* and in *Isabela Cultural*. As it presently stands, the rule is that a warrant of distraint and levy, standing alone and without declaring that it is the BIR's final decision, cannot be considered as an FDDA. However, it appears that the exception in *Union Shipping* is that, although there is no categorical final decision by the BIR on a protest, the filing of a judicial action for collection is tantamount to a denial of the protest and is the final action of the BIR.

Applying the foregoing in the instant case, the Court finds that the Warrant of Distraint and/or Levy issued on July 25, 2013 cannot be considered as the FDDA that may be appealed to this Court.

The Final Notice Before Seizure is the FDDA contemplated in this case, consistent with the ruling of the Supreme Court in *Isabela Cultural*

A perusal of the records shows that on June 3, 2013,[57] petitioner received a Final Notice Before Seizure dated May 23, 2013. It partially states: *Jr*

[57] BIR Records, p. 479.

> "If the tax liability is not settled after the prescribed period above, this office shall be constrained to take appropriate civil remedies or legal action based on the provisions of Sections 205 and 255 of the National Internal Revenue Code of 1997, as amended, xxx
>
> xxx xxx xxx
>
> In order to avoid the burden of any legal action that may be taken, you are advised to pay your tax liability as soon as possible."

An examination of the above-quoted statement reveals that respondent already threatened to pursue the available remedies for collection should petitioner still fail to pay its tax liabilities. Further evaluation of the records shows that, unlike the Preliminary Collection Notice[58] and the Second Notice where the BIR also threatened to initiate collection proceedings against petitioner,[59] the title of the document as Final Notice Before Seizure is, in itself, an indication that it is not a mere reiteration of the BIR's demand for petitioner to pay; it is likewise its final decision to hold petitioner liable to pay the subject taxes.

In *Isabela Cultural*,[60] the Supreme Court found that:

> "In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; **its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a *final* notice prior to seizure of property**. The letter itself clearly stated that respondent was being given this LAST OPPORTUNITY to pay; otherwise, its properties would be subjected to distraint and levy. **How then could it have been made to believe that its request for reconsideration was still pending determination,**

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[58] BIR Records, p. 473.
[59] BIR Records, p. 474.
[60] See Note 56.

> **despite the actual threat of seizure of its properties?"** *(Emphasis supplied)*

The Court notes that in *Isabela Cultural*, respondent therein received no other response from the BIR except the Final Notice Before Seizure. Moreover, in that case, the Notice contained the phrase "LAST OPPORTUNITY", in reference to respondent's obligation to pay. Nonetheless, the Court finds that the conclusion of the Supreme Court in *Isabela Cultural* is also applicable in the instant case, based on the above-stated reasons.

The Court further notes that the Preliminary Collection Notice,[61] the Second Notice[62] and the Final Notice Before Seizure[63] were not formally offered as evidence. In fact, the entire BIR Records collectively marked as Exhibit "R-8" was denied admission in the Resolution[64] dated April 30, 2015. However, a re-evaluation of the antecedent circumstances reveals that they may be considered by the Court as evidence.

In *Rafael Arsenio S. Dizon vs. Court of Tax Appeals,*[65] the Supreme Court held that:

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
>
> **SEC. 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in

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[61] See Note 57.
[62] See Note 58.
[63] See Note 59.
[64] Docket, pp. 942-945.
[65] G.R. No. 140944, April 30, 2008.

People v. Napat-a and *People v. Mate* on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases many of which were decided after *Vda. de Oñate*, we held that courts cannot consider evidence which has not been formally offered, nevertheless, petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*, this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:

From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

However, in *People v. Napat-a* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.** *gr*

From the foregoing declaration, however, it is clear that *Vda. de Oñate* is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.

In this case, we find that these requirements have not been satisfied. The assailed pieces of evidence were presented and marked during the trial particularly when Alberto took the witness stand. Alberto identified these pieces of evidence in his direct testimony. He was also subjected to cross-examination and re-cross examination by petitioner. But Alberto's account and the exchanges between Alberto and petitioner did not sufficiently describe the contents of the said pieces of evidence presented by the BIR. In fact, petitioner sought that the lead examiner, one Ma. Anabella A. Abuloc, be summoned to testify, inasmuch as Alberto was incompetent to answer questions relative to the working papers. The lead examiner never testified. Moreover, while Alberto's testimony identifying the BIR's evidence was duly recorded, the BIR documents themselves were not incorporated in the records of the case.

A common fact threads through *Vda. de Oñate* and *Ramos* that does not exist at all in the instant case. In the aforementioned cases, the exhibits were marked at the pre-trial proceedings to warrant the pronouncement that the same were duly incorporated in the records of the case. Thus, we held in *Ramos*:

In this case, we find and so rule that these requirements have been satisfied. **The exhibits in question were presented and marked during the pre-trial of the case thus, they have been incorporated into the records.** Further, Elpidio himself explained the contents of these exhibits when he was interrogated by respondents' counsel...

x x x x

> But what further defeats petitioner's cause on this issue is that respondents' exhibits were marked and admitted during the pre-trial stage as shown by the Pre-Trial Order quoted earlier.
>
> While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR."

The above-quoted jurisprudence lays down the general rule under Section 34, Rule 132 that the court shall consider no evidence which has not been formally offered. As an exception, the Court may consider evidence not formally offered, provided the following requisites are present: (1) The same must have been duly identified by testimony duly recorded; and (2) The same must have been incorporated in the records of the case.

Upon re-examination, the Court finds that the Preliminary Collection Notice, the Second Notice and the Final Notice Before Seizure were identified as forming part of the entire BIR docket forwarded to this Court.

Witness Ms. Ayres Floran L. Capitan states in her Judicial Affidavit:[66]

> "14. Q: After the issuance of Amended Notice what happened next?
>
> A: The entire docket of this case was transmitted to the Regional Office."

On the other hand, witness Ms. Ronalene Joy B. Achas also states in her Judicial Affidavit that:[67] ~~

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[66] See Note 25.

> "12. Q: What did you do next?
>
> A: The entire docket of this case was forwarded to Collection Section for enforcement of collection."

The entire docket referred to by the foregoing witnesses is the records required to be transmitted to the Court under Section 5(b) of the 2005 Revised Rules of the CTA, as amended, to wit:

> "(b) Transmittal of records. – The respondent Commissioner of Internal Revenue, Commissioner of Customs, the Secretary of Finance, the Secretary of Agriculture, or the Secretary of Trade and Industry, within ten days after filing an answer, the chairman of the Central Board of Assessment Appeals and the presiding judges of the Regional Trial Courts, within ten days from receipt of notice, shall certify and forward to the Court all the records of the case in their possession, with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case. Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court."

Thus, the Court may properly give probative value to the said pieces of evidence. As such, the Court concludes that the Final Notice Before Seizure received by petitioner on June 3, 2013 is the FDDA against petitioner that is properly appealable before this Court, and not the Warrant of Distraint and/or Levy issued on July 25, 2013.

Petitioner belatedly filed the instant Petition

To proceed, the determination of what constitutes the FDDA in the instant case is material in determining the period to file the Petition for Review before this Court. Jr

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[67] See Note 26.

Section 228 of the NIRC of 1997, as amended, provides that the aggrieved taxpayer should file a Petition before the Court within 30 days from receipt of the FDDA.

As held earlier, the Final Notice Before Seizure is the final decision of respondent on petitioner's protest, which was received by petitioner on June 3, 2013. Counting 30 days therefrom, petitioner had until July 3, 2013 within which to file the instant Petition. Petitioner filed the Petition on August 22, 2013.

Section 3(a)(1), Rule 4 of the 2005 Revised Rules of the CTA partially provides:

> "SEC 3. *Cases Within the Jurisdiction of the Court in Division.* - The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments xxx"

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[68] the Supreme Court stated that the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[69]

In the instant case, more than one (1) month has lapsed from July 3, 2013 when petitioner filed the instant Petition on August 22, 2013. Following the Ruling in *Rizal* case, the Court has no jurisdiction to entertain and determine the correctness of the subject assessments because there is no disputed assessment to speak of under Section 3(a)(1), Rule 4 of the 2005 Revised Rules of the CTA.

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[68] G.R. No. 168498, April 24, 2007.
[69] Id., citing *Chan Kian v. Court of Tax Appeals*, 105 Phil. 904, 906 (1959).

Considering the foregoing, the Court is constrained to deny the instant Petition.

WHEREFORE, in view thereof, the instant Petition for Review is **DENIED**, for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division 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