21-000506-0059

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**FIRST DIVISION**

**CTA CASE NO. 10712**

**BROADCAST ENTERPRISES & AFFILIATED MEDIA (BEAM), INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

# NOTICE OF DECISION

**To:**

**OFFICE OF THE SOLICITOR GENERAL**
134 Amorsolo Street, Legazpi Village
Makati City

**ATTY. ROSE ANN O. TOLENTINO**
Bureau of Internal Revenue
Legal Division, Revenue Region No.7B
25th Floor, The Podium-West Tower
ADB Avenue, Ortigas Center
Mandaluyong City

**SALVADOR LLANILO & BERNARDO**
Units 1706-1711, 17th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

***GREETINGS:***

You are hereby notified by these presents that on **November 19, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2024.**

**Atty. Margarette Y. Guzman**
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

# FIRST DIVISION

**BROADCAST ENTERPRISES & AFFILIATED MEDIA (BEAM), INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10712**

Members:

**DEL ROSARIO,** *P.J., Chairperson,*
**BACORRO-VILLENA,** *and*
**CUI-DAVID,** *JJ.*

Promulgated:
NOV 19 2024 1:30PM

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by petitioner Broadcast Enterprises & Affiliated Media (BEAM), Inc. (**petitioner**) pursuant to Section 3(a)(1)[2], Rule 4[3] and Section 4(a)[4], Rule 8[5] of the Revised Rules

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1 Filed on 20 December 2021, Division Docket, Volume I, pp. 6-268, with attached exhibits.

2 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* — …
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

3 JURISDICTION OF THE COURT.

4 **SEC. 4.** *Where to appeal; mode of appeal.* —
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

5 PROCEDURE IN CIVIL CASES.

of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and cancellation of respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Final Decision on Disputed Assessment (**FDDA**) dated 12 November 2021[6], for deficiency income tax (**IT**), value-added tax (**VAT**) and expanded withholding tax (**EWT**) for the taxable year (**TY**) 2017 in the aggregate amount of **₱7,399,669.66**, inclusive of interest.

## PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 3/F, Globe Telecom Tower I Pioneer Highlands corner Madison Streets, Mandaluyong City.[7] It is registered with the Securities and Exchange Commission (**SEC**) under Company Registration No. ASO93-008342.[8] It is also registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer Identification No. (**TIN**) 234-404-902-000.[9]

As its Amended Articles of Incorporation[10] (**AOI**) show, petitioner's primary purpose is to engage in or conduct radio and television broadcasting, as well as telecommunications, on a commercial or sustaining basis throughout the Philippines. It also seeks to acquire, own, install, maintain, operate, sell, lease, and convey power plants and radio and television broadcasting stations both within the Philippines and abroad.

Respondent, on the other hand, is the duly appointed CIR, vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other tax laws, rules and, regulations. He or she may be served summons, pleadings, and other court processes

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6 Exhibit "P-9"/Exhibit "R-16", Division Docket, Volume I, pp. 366-372.

7 See Petitioner's Securities and Exchange Commission (**SEC**) Certificate of Filing of Amended Articles of Incorporation (**AOI**) with Company Registration No. ASO93-008342 dated 26 January 2015 with attached Amended AOI, Exhibit "P-1", id., Volume II, pp. 698-708.

8 Id., p. 698.

9 See Bureau of Internal Revenue (**BIR**) Certificate of Registration, Exhibit "P-2", id., p. 709.

10 Supra at note 7, p. 700.

at the 5th Floor, BIR National Office Building, Sen. Miriam Defensor Santiago Avenue (formerly, Agham Road), Diliman, Quezon City.[11]

## FACTS OF THE CASE

On 17 January 2019, petitioner received a Letter of Authority (**LOA**) dated 09 January 2019[12] with Reference No. LOA-041-2018-00000717/eLA201600051390, issued by Revenue Region No. 7-Quezon City, through then Regional Director Marina C. De Guzman (**RD De Guzman**). The LOA authorized Revenue Officer Renee Louise Aspe (**RO Aspe**) and Group Supervisor Sofia Gallenero (**GS Gallenero**) to examine petitioner's books of accounts and other accounting records concerning all internal revenue taxes for the period 01 January 2017 to 31 December 2017, or TY 2017.[13]

On 28 January 2020, petitioner received an undated "Notice for Informal Conference"[14] (**NIC**), which assessed it for deficiency IT, VAT and EWT in the aggregate amount of ₱22,631,856.65, inclusive of interest[15], computed as follows:

| Tax Type | Basic | Interest | Total |
|---|---|---|---|
| IT | ₱14,613,547.17 | ₱3,209,375.18 | ₱17,822,922.35 |
| VAT | 3,741,650.42 | 920,138.47 | 4,661,788.89 |
| EWT | 117,791.20 | 29,354.21 | 147,145.41 |
| **Total** | **₱18,472,988.79** | **₱4,158,867.86** | **₱22,631,856.65** |

The informal conference was scheduled for 10 March 2020. However, due to strict protocols implemented in petitioner's office and the rising COVID-19 cases at the time, the informal conference did not proceed. Consequently, after reviewing petitioner's case, Revenue District Office (**RDO**) No. 41 submitted its findings to the appropriate office for the issuance of a Preliminary Assessment Notice (**PAN**).[16]

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11 Paragraph 1, II. Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, pp. 562-563.

12 Exhibit "P-3", id., p. 710; Exhibit "R-2", id., Volume I, p. 322.

13 Par. 2, II. Admitted Facts, JSFI, id., Volume II, p. 563.

14 Exhibit "P-4", id., pp. 712-716; Exhibit "R-7", id., Volume I, p. 332.

15 Par. 3, II. Admitted Facts, JSFI, id., Volume II, p. 563.

16 Pars. 5 and 6, Answer, id., Volume I, pp. 279-280.

Thereafter, on 16 December 2020, the BIR served a copy of the PAN with Details of Discrepancies[17] to petitioner by sending it *via* registered mail to the latter's registered business address at 3/F, Globe Telecom Tower I Pioneer Highlands corner Madison Streets, Mandaluyong City, due to petitioner's absence to personally acknowledge the PAN's receipt.[18]

The PAN with Details of Discrepancies dated 16 December 2020 purportedly informed petitioner of its deficiency taxes amounting to ₱7,241,780.27, inclusive of interest, broken down as follows:

| Tax Type | Basic | Interest | Total |
|---|---|---|---|
| IT | ₱4,331,089.26 | ₱1,422,495.84 | ₱5,753,585.10 |
| VAT | 980,432.97 | 347,798.52 | 1,328,231.49 |
| EWT | 117,791.20 | 42,172.48 | 159,963.68 |
| **Total** | **₱5,429,313.43** | **₱1,812,466.84** | **₱7,241,780.27** |

On 15 January 2021, petitioner received a copy of respondent's Formal Letter of Demand with Details of Discrepancies and Assessment Notices[19] (**FLD/FAN**), all dated 08 January 2021, demanding payment for alleged deficiency taxes for TY 2017 totaling ₱7,297,114.64, inclusive of interest[20], itemized as follows:

| Tax Type | Basic | Interest | Total |
|---|---|---|---|
| IT | ₱4,331,089.26 | ₱1,466,637.35 | ₱5,797,726.61 |
| VAT | 980,432.97 | 357,790.88 | 1,338,223.85 |
| EWT | 117,791.20 | 43,372.98 | 161,164.18 |
| **Total** | **₱5,429,313.43** | **₱1,867,801.21** | **₱7,297,114.64** |

On 11 February 2021, petitioner filed a Request for Reinvestigation[21], protesting the FLD/FAN and requesting a

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17 Exhibit "R-9", id., pp. 338-343.
18 See Exhibit "R-10", Affidavit of Service of the PAN, id., p. 344.
19 Exhibit "P-5", Division Docket, Volume II, pp. 718-726; Exhibits "R-11" and "R-11-A" to "R-11-C", BIR Records, pp. 613-621.
20 Par. 4, II. Admitted Facts, JSFI, id., p. 563.
21 Exhibit "P-6", BIR Records, pp. 633-660, with annexes.

reinvestigation along with the submission of supporting documents within sixty (60) days. On 24 March 2021, petitioner received respondent's Letter dated 01 March 2021[22], informing petitioner that the Request for Reinvestigation was given due course.[23] Respondent then issued a Letter dated 21 April 2021[24], formally granting petitioner's Request for Reinvestigation. Earlier, on 12 April 2021, petitioner had also submitted additional supporting documents in connection with the request.[25]

On 19 November 2021, petitioner received respondent's FDDA dated 12 November 2021[26], signed by then Regional Director Edgar B. Tolentino (**RD Tolentino**), wherein respondent partially denied its Request for Reinvestigation by cancelling the unsupported creditable withholding tax (**CWT**) finding under the assessed deficiency IT while retaining other items of the assessment, specifically the deficiency IT, VAT and EWT for TY 2017, totaling ₱7,399,669.66, inclusive of interest[27], computed as follows:

| Tax Type | Basic | Interest | Total |
|---|---:|---:|---:|
| IT | ₱4,021,666.06 | ₱1,767,770.15 | ₱5,789,436.21 |
| VAT | 980,432.97 | 456,747.46 | 1,437,180.43 |
| EWT | 117,791.20 | 55,261.82 | 173,053.02 |
| **Total** | **₱5,119,890.23** | **₱2,279,779.43** | **₱7,399,669.66** |

## PROCEEDINGS BEFORE THE COURT

On 20 December 2021, within thirty (30) days from receipt of the FDDA, petitioner filed the instant Petition for Review[28] before the Second Division[29], docketed as CTA Case No. 10712. On 03 January 2022, the Court issued Summons[30] to respondent directing him or her to

22 Exhibit "P-7", id., p. 663.
23 Par. 5, II. Admitted Facts, JSFI, Division Docket, Volume II, p. 563.
24 Exhibit "R-13", id., Volume I, p. 357.
25 Exhibit "P-8", Volume II, pp. 727-730.
26 Exhibit "P-9"/Exhibit "R-16", supra at note 6.
27 Par. 6, Admitted Facts, JSFI, Division Docket, Volume II, p. 563.
28 Supra at note 1.
29 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
30 Division Docket, Volume I, p. 269.

submit an Answer within 30 days from service. Respondent received the said Summons on 10 February 2022.[31]

After the Second Division granted it an extension of time to file an Answer[32], respondent filed the same on 08 April 2022, citing therein the following special and affirmative defenses: (1) there is no violation of petitioner's right to due process; (2) the assessments issued against petitioner for deficiency IT, VAT and EWT, inclusive of increments, have factual and legal bases; and, (3) the assessments are in accordance with the law.[33]

On 12 April 2022, the Second Division set the case for a Pre-Trial Conference on 06 June 2022.[34] Petitioner and respondent filed their respective Pre-Trial Briefs[35] on 01 June 2022.

On 02 June 2022, respondent transmitted the entire BIR Records of the case consisting of 880 pages in one (1) folder.[36] The Second Division noted the same in a Minute Resolution dated 09 June 2022.[37]

During the Pre-Trial Conference on 06 June 2022, and with the agreement of both parties, the case was referred to the Philippine Mediation Center Unit - Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings.[38] However, the parties opted not to proceed with mediation.[39] Consequently, the Second Division rescheduled the case for pre-trial on 07 September 2022.[40]

On 02 September 2022, petitioner filed a "Motion with Leave of Court to Admit Petitioner's (I) Amended Petition for Review; (II) Amended Judicial Affidavit of Mr. James Kenneth Venta [**Venta**]; and (III) Amended Pre-Trial Brief"[41] (**Motion to Admit**), requesting

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31 See Notification dated 02 March 2022, id., p. 270.
32 See Order dated 30 March 2022, id., p. 275.
33 Id., pp. 276-287.
34 See Notice of Pre-Trial Conference dated 12 April 2022, id., pp. 301-302.
35 Petitioner's Pre-Trial Brief, id., pp. 378-388; Respondent's Pre-Trial Brief, id., pp. 304-307.
36 See Respondent's Compliance dated 02 June 2022, id., pp. 390-391.
37 Id., p. 397.
38 See Minutes of the Hearing and Order, both dated 06 June 2022, id., pp. 393 and 394, respectively.
39 See No Agreement to Mediate dated 26 July 2022, id., p. 398.
40 See Resolution dated 03 August 2022, id., p. 400.
41 Id., pp. 401-405.

that the Second Division admit its Amended Petition for Review[42], Amended Pre-Trial Brief[43] and Venta's Amended Judicial Affidavit.[44]

During the Pre-Trial Conference on 07 September 2022, the Second Division granted petitioner's Motion to Admit and noted respondent's counsel's manifestation that she would not file an Answer to the Amended Petition for Review, opting instead to adopt the previously filed Answer.[45] The Court also acknowledged the documentary exhibits listed in the parties' Pre-Trial Briefs, scheduled the hearing dates for the presentation of petitioner's witnesses, and gave petitioner's counsel 30 days, or until 07 October 2022, to file the Motion to Commission an Independent Certified Public Accountant (**ICPA**).[46] Additionally, the Court set a Commissioner's Hearing on 07 November 2022 to mark the parties' evidence and gave them 30 days, or until 07 November 2022, to file their Joint Stipulation of Facts and Issues (**JSFI**).[47] Subsequently, on 06 October 2022, the parties submitted their JSFI.[48]

In the Resolution dated 17 October 2022[49], the Second Division admitted and approved the parties' JSFI and, thereby, deemed terminated the pre-trial. The Court also issued the corresponding Pre-Trial Order[50] on 07 November 2022.

Earlier, on 11 April 2022, petitioner filed a "Motion to Commission an [ICPA]"[51] (**Motion for Commissioning**), praying that Joel M. Ganalon (**Ganalon**) of Reyes Tacandong & Co. (**RT&Co.**) be appointed as the ICPA. The Second Division granted the same during the 17 November 2022 hearing.[52]

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42 Id., pp. 406-436.
43 Id., pp. 544-555.
44 Exhibit "P-15", id., pp. 437-543, with attached exhibits.
45 See Minutes of the Hearing and Order, both dated 07 September 2022, id., pp. 556-557 and 558-561, respectively.
46 Id.
47 Id.
48 Id., Volume II, pp. 562-573.
49 Id., p. 575.
50 Id., pp. 577-584.
51 Id., Volume I, pp. 289-299, with annex.
52 See Minutes of the Hearing and Order, both dated 17 November 2022, id., Volume II, pp. 600 and 601-602, respectively.

On 23 November 2022, petitioner filed a "Motion to Amend the Pre-Trial Order"[53], requesting the Court to: (1) amend the Stipulation of Issue in Item (II)B to reflect the issues stipulated by the parties in Item II(B) of their JSFI[54]; and, (2) include Exhibits "P-15" to "P-18"[55], with sub-markings, in petitioner's list of documentary evidence to provide a complete description. The Second Division granted this motion in the Resolution dated 02 March 2023.[56]

On 19 December 2022, petitioner filed ICPA Ganalon's Report of even date.[57]

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of its witnesses, namely: (1) Venta, petitioner's Group Comptroller and Administrative Head; and, (2) ICPA Ganalon.

On the witness stand, Venta identified his Amended Judicial Affidavit dated 01 September 2022[58], in which he essentially declared that: (1) as Group Comptroller and Administrative Head, he oversees petitioner's financial operations, including tax compliance, reporting, filing, processing claims for tax refunds, and coordinating with tax counsel, Salvador Llanillo & Bernardo, on tax assessments and related cases; (2) petitioner is a domestic corporation primarily established to engage in radio and television broadcasting and telecommunications, including the ownership, operation, and management of broadcasting stations and power plants in the Philippines and elsewhere; (3) petitioner filed its administrative and judicial protests against respondent's deficiency tax assessments for TY 2017 within the

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53 Id., pp. 616-619.

54 Supra at note 48.

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| Exhibit No. | Description |
|---|---|
| "P-15," inclusive of sub-markings | Sworn Statement and Supplemental Sworn Statement of Mr. Joel M. Ganalon (**Ganalon**), inclusive of his signature and other attachments thereto. |
| "P-16," inclusive of sub-markings | Sworn Statement of Mr. James Kenneth Venta, inclusive of his signature. |
| "P-17," inclusive of sub-markings | Independent Certified Public Accountant (**ICPA**) Report. |
| "P-18," inclusive of sub-markings | Documents to be marked by the ICPA. |

56 Division Docket, Volume II, pp. 757-758.

57 Exhibit "P-16", id., pp. 623-657.

58 Exhibit "P-15", supra at note 44.

reglementary period; (4) the deficiency IT, VAT and EWT assessments against petitioner for TY 2017 are invalid and void; and, (5) the deficiency IT, VAT and EWT assessments against petitioner for TY 2017 lack legal and factual basis.

On cross-examination, Venta confirmed the location of petitioner's place of business. He informed the Court that from March 2020 until September 2022, petitioner's protocol during the pandemic allowed most employees to work from home, with one (1) or two (2) employees occasionally returning to the office. Before the pandemic, petitioner's employees worked in the office from 8:00 a.m. to 5:00 p.m., Monday to Friday. Regarding the protocol for receiving mail and correspondence, Venta stated that during the pandemic, the addressee or named recipient typically receives mail. If the addressee is unavailable, the administrative assistant or the accounting and tax managers present receive it.[59] Petitioner did not conduct any redirect examination.[60]

In response to the Court's clarificatory questions, Venta stated that petitioner did not receive a PAN, as also indicated in its Protest (Request for Reinvestigation) against the FLD/FAN. He further noted that they have not seen the PAN and only received the FLD/FAN.[61]

During the 19 January 2023 hearing, ICPA Ganalon identified his ICPA Report dated 19 December 2022[62], the USB[63] containing the scanned copies of the documents that he examined, and his Judicial Affidavit dated 06 January 2023[64], in which he essentially stated that: (1) petitioner's deficiency IT, VAT and EWT liabilities for TY 2017 were audited using standard accounting procedures; and, (2) respondent's assessment for deficiency IT, VAT and EWT was duly reconciled with petitioner's Monthly Alphalist of Payees (**MAP**), Summary Lists of Purchases (**SLP**), supporting documents for purchases, General Ledger (**GL**), VAT returns, Annual Income Tax Return (**ITR**), Audited Financial Statements (**AFS**), and EWT returns.

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59 TSN dated 17 November 2022, pp. 10-12.
60 Id., p. 12.
61 Id., pp. 12-14.
62 Exhibit "P-16", supra at note 57.
63 Exhibit "P-33".
64 Exhibit "P-16-1", Division Docket, Volume II, pp. 664-677.

On cross-examination, ICPA Ganalon testified that he conducted the examination of petitioner's documents at his office, as petitioner had implemented a work-from-home arrangement. He further stated that he was unable to verify whether the documents submitted to him for examination were the same ones submitted to the BIR during the audit.[65]

Petitioner did not conduct any redirect examination.[66]

On 03 February 2023, after completing the presentation of its testimonial evidence, petitioner filed its "Formal Offer of Evidence"[67] (**FOE**), consisting of Exhibits "P-1" to "P-34-1", inclusive of sub-markings. Petitioner also included a motion to remark Exhibits "P-16" and "P-16-1" as Exhibits "P-34" and "P-34-1," respectively. On 20 February 2023, respondent filed a Comment[68] thereto.

In the Resolution dated 09 March 2023[69] (**FOE Resolution**), the Second Division deemed Exhibits "P-15" and "P-15-1" (instead of "P-16" and "P-16-1")[70] as remarked to Exhibits "P-34" and "P-34-1," respectively, and admitted petitioner's exhibits, *except* for Exhibits "P-19-A-57" to "P-19-A-60", "P-19-A-143" and "P-19-A-156"[71] (**Denied Exhibits**), which were denied for being completely blurred or unreadable. The Court also scheduled the initial presentation of respondent's evidence for 23 March 2023.

On 16 March 2023, petitioner moved to defer the presentation of witnesses (through his or her "Urgent Motion to Defer Presentation of

65 TSN dated 19 January 2023, pp. 10-11.

66 Id., p. 11.

67 Division Docket, Volume II, pp. 682-696.

68 Id., pp. 754-755.

69 Id., pp. 760-763.

70 A perusal of the record shows that Venta's Amended Judicial Affidavit and his signature thereon are marked as Exhibits "P-15" and "P-15-1," respectively. Whereas, in petitioner's Formal Offer of Evidence (**FOE**), Exhibit "P-15" is offered as the "Sworn Statement of Joel Ganalon dated April 8, 2022" and Exhibit "P-15-1" as the "signature of Mr. Joel Ganalon on page 3 of his Sworn Statement." Hence, Exhibits "P-15" and "P-15-1," were used to refer to two (2) different items, not Exhibits "P-16" and "P-16-1." Moreover, ICPA Ganalon's Judicial Affidavit dated 08 April 2022 and his signature thereon were not marked.

71

| Exhibit No/s. | Description |
|---|---|
| "P-19-A-57" to "P-19-A-60" | 2017 Supporting Documents for Purchases - Unaccounted Purchases. |
| "P-19-A-143" | |
| "P-19-A-156" | |

Respondent's Witness[72]) until petitioner has filed its Motion for Reconsideration (**MR**) on the FOE Resolution and until the Court has fully resolved it. The Second Division granted this request in its Resolution dated 23 March 2023.[73] Accordingly, the previously scheduled initial presentation of respondent's evidence was cancelled and reset to 01 August 2023.

On 28 March 2023, petitioner filed an "Omnibus Motion (Re: Resolution dated March 9, 2023) I. For Reconsideration; II. To Properly Mark Exhibits "P-15", "P-15-1", "P-15-2" and "P-15-3"; and III. To Amend [FOE] to Conform to Evidence"[74] (**Omnibus Motion**), requesting the Second Division to: (1) admit the Denied Exhibits[75], as the originals thereof have been properly marked and identified; (2) correctly mark Exhibits "P-15", "P-15-1", "P-15-2" and "P-15-3"[76]; and, (3) amend the descriptions of Exhibits "P-1", "P-10-4", "P-12-4", "P-15-2", "P-15-3" and "P-19-D-1" to "P-19-D-65"[77] in the FOE to conform to the evidence. Respondent failed to file a comment despite due notice.[78]

In the Resolution dated 18 May 2023[79], the Second Division partially granted petitioner's Omnibus Motion. Accordingly, the Court

72 Division Docket, Volume II, pp. 764-767.

73 Id., pp. 770-771.

74 Id., pp. 772-777.

75 Supra at note 71.

76

| Exhibit No. | Description |
|---|---|
| "P-15" | Sworn Statement of Joel Ganalon dated 08 April 2022. |
| "P-15-1" | Signature of Mr. Joel Ganalon on page 3 of his Sworn Statement. |
| "P-15-2" | Amended Sworn Statement of Joel Ganalon dated 11 November 2022. |
| "P-15-3" | Signature of Mr. Joel Ganalon on page 2 of his Amended Sworn Statement. |

77

| Exhibit No. | Description |
|---|---|
| "P-1" | Petitioner's SEC Certificate of Filing of Amended Articles of Incorporation with Company Reg. No. ASO93-008342 dated 26 January 2015 with attached Amended Articles of Incorporation. |
| "P-10-4" | Sales Invoice No. 0144 dated 12 September 2017 issued by CISCO to the Corporation signed by Mr. Danie P. Daniel. |
| "P-12-4" | OR No. 0041652 dated 11 January 2017 issued by Asianlife & General Assurance Corporation in favor of petitioner. |
| "P-15-2" | Supplemental Sworn Statement of Mr. Joel Ganalon dated 11 November 2022. |
| "P-15-3" | Signature of Mr. Joel Ganalon on page 2 of his Supplemental Sworn Statement. |
| "P-19-D-1" to "P-19-D-65" | 2017 Supporting Documents for Purchases - Disallowed Expenses Due to Non-withholding. |

78 See Records Verification dated 02 May 2023, Division Docket, Volume II, p. 781.

79 Id., pp. 783-786.

still denied admission of the previously Denied Exhibits for being completely blurred or unreadable, deemed marked the documents requested to be marked as Exhibits "P-15", "P-15-1", "P-15-2" and "P-15-3", respectively, and deemed amended the descriptions in the FOE corresponding to Exhibits "P-1", "P-10-4", "P-12-4", "P-15-2", "P-15-3" and "P-19-D-1" to "P-19-D-65."[80]

Subsequently, in view of the reorganization of the three (3) Divisions of the Court effective 29 May 2023[81], the present case was transferred to the First Division.[82]

During the 01 August 2023 hearing before the First Division[83], respondent presented his or her lone witness, RO Aspe, who essentially testified by way of her Judicial Affidavit dated 31 May 2022[84] that: (1) at the time of the execution of her Judicial Affidavit, she was stationed at RDO No. 43-Pasig City; (2) she was tasked to conduct the audit examination on petitioner's internal revenue taxes for TY 2017 pursuant to LOA No. 041-2018-00000717, SN eLA201600051390 dated 09 January 2019; (3) petitioner has internal revenue tax deficiencies for TY 2017; (4) the LOA, PAN, FLD/FAN, FDDA and other BIR notices have been served to petitioner; and, (5) petitioner is liable for deficiency IT, VAT and EWT.

On cross-examination, RO Aspe confirmed that the BIR issued and served upon petitioner the "First Notice for Presentation of Records"[85] and the "Second and Final Notice for Presentation of Records"[86], which petitioner received on 28 January 2019 and 28 March 2019, respectively. Regarding the "Five (5) Day Notice Before Subpoena Duces Tecum"[87], she explained that said notice was issued because petitioner did not provide the necessary records for examination despite repeated requests, as indicated in her Judicial Affidavit. When asked to confirm whether petitioner failed to submit or present any documents,

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80 Supra at note 77.
81 See Notice dated 29 May 2023, Division Docket, Volume II, p. 787.
82 The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
83 See Minutes of the Hearing and Order, both dated 01 August 2023, Division Docket, Volume II, pp. 787A-787C and 788-789.
84 Exhibit "R-18", id., Volume I, pp. 310-377, with attached exhibits.
85 Exhibit "R-3", id., p. 325.
86 Exhibit "R-4", id., p. 326.
87 Exhibit "R-5", id., p. 327.

she responded that she could not remember and maintained this answer, even after acknowledging that she had signed petitioner's Transmittal Sheet dated 10 March 2020[88] in the "Received by" portion.[89]

RO Aspe further confirmed that she sought to collect information from third parties with whom petitioner had transacted.[90] However, she admitted that she did not receive any responses to the confirmation letters. Nevertheless, she maintained that this lack of response did not mean that the information she gathered was unverified.[91]

Regarding the PAN, RO Aspe affirmed, when asked, the statements in her Judicial Affidavit that the PAN was issued and served *via* registered mail to petitioner's registered business address on 16 December 2020. However, she could not provide the name of the person who received it as this information was not included in the Affidavit of Service of PAN[92] (to which she had been a signatory).[93]

On redirect examination, RO Aspe was asked to explain why the PAN was served *via* registered mail. She explained that, in 2020, personal service was discouraged due to pandemic-related precautions.[94]

Petitioner did not conduct any re-cross examination.[95]

In addressing the Court's clarificatory questions, RO Aspe stated that she could not recall whether the BIR is in possession of the registry receipts or Registry Return Cards related to the service of the PAN and the FLD/FAN. Consequently, she did not know who had received these issuances on petitioner's end. She also responded in the negative when asked if she was aware that petitioner denied receiving the PAN. At this point, the Court emphasized that it is respondent's responsibility to prove actual receipt, given petitioner's denial.[96]

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88 Exhibit "P-4-1", id., Volume II, p. 717.
89 TSN dated 01 August 2023, pp. 11-13.
90 See Exhibits "R-6" to "R-6-C", Division Docket, Volume I, pp. 328-331.
91 TSN dated 01 August 2023, pp. 14-15.
92 Exhibit "R-10", supra at note 18.
93 TSN dated 01 August 2023, pp. 15-18.
94 Id., p. 19.
95 Id.
96 Id., pp. 19-22.

On 11 August 2023, respondent filed his or her FOE[97] consisting of Exhibits "R-1" to "R-18-A", inclusive of sub-markings. On 29 August 2023, petitioner filed its Comment[98] thereto.

In the Resolution dated 28 September 2023[99], the First Division admitted all of respondent's exhibits. In the same Resolution, the Court likewise granted the parties a period of 30 days within which to file their respective memoranda.

After the First Division granted an extension of time[100], petitioner filed its Memorandum[101] on 13 November 2023. Respondent, on the other hand, failed to file a memorandum despite due notice.[102] Accordingly, on 23 November 2023, the First Division considered the case submitted for decision.[103]

## ISSUES

As the parties so stipulated[104], the following issues were submitted for this Court's determination —

I.

WHETHER THE DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT) AND EXPANDED WITHHOLDING TAX (EWT) ASSESSMENTS FOR THE TAXABLE YEAR (TY) 2017 SHOULD BE CANCELLED AND WITHDRAWN FOR LACK OF LEGAL AND FACTUAL BASIS; AND,

II.

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S DEFICIENCY TAX ASSESSMENTS FOR THE TAXABLE YEAR (TY) 2017 ARE NULL AND VOID FOR HAVING BEEN ISSUED IN VIOLATION OF PETITIONER BROADCAST ENTERPRISES & AFFILIATED MEDIA (BEAM), INC.'S RIGHT TO DUE PROCESS.

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97 Division Docket, Volume II, pp. 791-797.
98 Id., pp. 803-805.
99 Id., pp. 810-811.
100 See Minute Resolution dated 23 November 2023, id., p. 856.
101 Id., pp. 817-855.
102 See Records Verification dated 10 November 2023, id., p. 816.
103 See Minute Resolution dated 23 November 2023, supra at note 100.
104 See Par. 7, III. Issues, JSFI, supra at note 48, p. 564.

## ARGUMENTS

*Firstly*, regarding the alleged violation of its right to due process during respondent's issuance of deficiency tax assessments for TY 2017, petitioner argues that respondent failed to follow mandatory procedures in auditing its books of accounts. Petitioner highlights the following circumstances that breached the due process requirements: (1) respondent's failure to issue a PAN; (2) respondent's failure to conduct a quality audit; and, (3) the lack of a final and unequivocal demand for payment in respondent's FLD/FAN and FDDA for the alleged deficiency taxes.

Petitioner argues that, with its denial of receiving the PAN, the burden shifted to respondent to prove that it (or its authorized representatives) indeed received the mailed assessment notices. Since respondent failed to provide competent and substantial evidence to demonstrate the PAN's proper service and issuance and to confirm its actual receipt, respondent's deficiency tax assessments for TY 2017 must be declared null and void for violating petitioner's right to due process under Section 228[105] of the NIRC of 1997, as amended, and Section 3.1.2 of Revenue Regulations (**RR**) No. 12-99[106], as amended.

Petitioner argues that, due to respondent's failure to issue a PAN, respondent did not examine its books of accounts and records in sufficient depth to verify the accuracy and validity of the entries. Consequently, respondent failed to conduct a quality audit as defined under Revenue Audit Memorandum Order (**RAMO**) No. 1-2000.[107] Furthermore, petitioner asserts that the deficiency tax assessments rely heavily on assumptions, given respondent's claim that petitioner failed to present supporting documents to refute the BIR's findings. Petitioner contends this claim is baseless, noting that it submitted three (3) binders containing original sales invoices and official receipts (**ORs**), which were received by RO Aspe, as evidenced by her signature on the Transmittal Sheet.[108] Therefore, petitioner likewise submits that the

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105 SEC. 228. *Protesting of Assessment.*

106 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

107 Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).

108 Exhibit "P-4-1", supra at note 88.

deficiency tax assessments should be withdrawn and cancelled for being based on mere presumptions and, consequently, void.

Additionally, petitioner points out that a cursory reading of respondent's FLD/FAN and FDDA reveals that not only do both lack a definite amount of tax liability for which petitioner is accountable, the assessments also lacked a final and unequivocal demand for the payment of the alleged deficiency taxes. According to petitioner, a request to pay is not similar to a demand to pay, as to demand is to require a person to do or to assert a legal right. The phrase "requested to pay" as stated in the FLD/FAN and FDDA does not constitute such assertion. Citing the parameters laid down in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[109], petitioner submits that respondent's FLD/FAN and FDDA lacked final and unequivocal demand and thus, should be declared null and void.

*Secondly*, even assuming that the subject deficiency tax assessments were validly issued, petitioner contends that they should be cancelled and withdrawn for lack of legal and factual basis on the following grounds:

**A. Deficiency IT Assessment**

(1) There are no unaccounted purchases in TY 2017 amounting to ₱6,664,656.44, as ICPA Ganalon verified and found no discrepancy between the amounts of gross taxable purchases *per* SLP and income payments *per* MAP to various suppliers;

(2) There are no unsupported expenses in TY 2017 amounting to ₱22,321.00, as this amount corresponds to recorded expenses for electrical services provided by Cebu Integral System Construction and Trading Corp. (**CISCO**) in petitioner's books or GL;

(3) There is no basis for disallowing expenses amounting to ₱5,802,789.02 due to alleged non-withholding, as the taxes due were properly withheld and remitted to the BIR, with any discrepancies attributed solely to timing differences, as confirmed by ICPA Ganalon's reconciliation;

(4) There is no basis for the BIR's finding that it failed to subject its salaries, wages, and employee benefits amounting to ₱915,788.42 to withholding tax on compensation (**WTC**), as the noted discrepancies merely refer to the conversion and accrual of leave credits for TY 2017, statutory

[109] G.R. No. 215957, 09 November 2016.

contributions to the Social Security System (**SSS**), Philippine Health Insurance Corporation (**PHIC**), Home Development Mutual Fund (**HDMF**), and health and medical premiums, which are not subject to WTC.

**B. Deficiency VAT Assessment**

(1) There is no basis for imposing VAT on the alleged undeclared or unaccounted purchases amounting to ₱6,664,656.44, as respondent failed to demonstrate that petitioner actually received or derived any gain or profit from these purchases; and,

(2) There is no reliable basis for disallowing the alleged unsupported claimed input tax amounting to ₱181,674.20, as it is based solely on unverified third-party information (**TPI**).

**C. Deficiency EWT Assessment**

There is no basis for imposing EWT on income payments totaling ₱117,791.20, for which petitioner allegedly failed to withhold and remit the correct EWT, as these relate to purchases of goods and services subjected to EWT in 2016. Additionally, since petitioner's status as a taxpayer under the Taxpayer Account Management Program (**TAMP**) only commenced on 01 November 2018, petitioner's income payments for TY 2017 were not subject to the rates for TAMP taxpayers.

## <u>RULING OF THE COURT</u>

Before delving into the merits of the case, the Court finds it propitious to first resolve whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[110] Section 7(a)(1) of Republic Act (**RA**) No. 1125[111], as amended by RA 9282[112], provides:

> ...
>
> **Sec.** 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.][113]
>
> ...

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[114]

The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads 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[.] ...
>
> ...

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110 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

111 AN ACT CREATING THE COURT OF TAX APPEALS.

112 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

113 Emphasis and underscoring supplied.

114 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

> 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 <u>receipt</u> of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**[115]
>
> ...

The aforequoted Section 228 is implemented by RR No. 12-99[116], as amended by RR No. 18-2013[117], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides the taxpayer's options on disputed assessments, to wit:

> ...
>
> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> Sec. 3.1.4. *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation as follows:
>
> (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

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115 Italics in the original text, emphasis and underscoring supplied.
116 Supra at note 106.
117 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> (ii) ***Request for reinvestigation*** **— refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.**
>
> ...
>
> For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. ...
>
> ...
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: <u>(i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision</u>**; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.[118]
>
> ...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[119] (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[120], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

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[118] Italics in the original text, emphasis and underscoring supplied.

[119] G.R. No. 208731, 27 January 2016; Citation omitted, emphasis, italics and underscoring in the original text and supplied.

[120] G.R. No. 221780, 25 March 2019.

> 1. **If the protest is wholly or partially denied by the CIR <u>or</u> his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

...

Based on the foregoing provisions and jurisprudence, where the CIR, through his or her authorized representative, denies a taxpayer's protest, the latter may appeal to the CTA within 30 days from the date of receipt of the CIR's decision.

In this case, the following are the pertinent dates and events in determining the timeliness of the Petition for Review:

| Date | Event |
|---|---|
| 15 January 2021 | Petitioner received respondent's FLD/FAN dated 08 January 2021.[121] |
| 11 February 2021 | Petitioner filed its Request for Reinvestigation (Protest against the FLD) dated 21 February 2019[122] within the 30-day reglementary period. |
| 24 March 2021 | Petitioner received respondent's Letter dated 01 March 2021[123], giving due course the Request for Reinvestigation. |
| 21 April 2021 | Petitioner submitted additional supporting documents in connection with the Request for Reinvestigation within the 60-day reglementary period. |
| 19 November 2021 | Petitioner received respondent's FDDA dated 12 November 2021[124], signed by RD Tolentino. |

121 Exhibit "P-5", supra at note 19.
122 Exhibit "P-6", supra at note 21.
123 Exhibit "P-7", supra at note 22.
124 Exhibit "P-9"/Exhibit "R-16", supra at note 6.

| Date | Event |
|---|---|
| **20 December 2021** | Petitioner filed its Petition for Review[125] within the 30-day reglementary period, as the last day, 19 December 2021, fell on a Sunday. |

Since the instant Petition for Review[126] was timely filed on <u>20 December 2021</u>, the next business day following the last day of the 30-day appeal period (reckoned from petitioner's receipt of respondent's FDDA on 19 November 2021), this Court acquired jurisdiction over the case.

We now proceed to the issues presented by the parties.

RESPONDENT FAILED TO PROVE THAT THE PRELIMINARY ASSESSMENT NOTICE (PAN) WAS PROPERLY SERVED ON AND RECEIVED BY PETITIONER.

Petitioner contends that respondent violated its right to due process when it did not receive the PAN before the issuance of the FLD/FAN[127] on 08 January 2021, which it received on 15 January 2021.

Respondent relies solely on the registry receipt attached to the PAN[128], Affidavit of Service of PAN[129] and the Report on Service by Mail/Courier[130] to establish petitioner's supposed receipt of the PAN.

We disagree with respondent.

Section 228 of the NIRC of 1997, as amended, governs the protest of assessments for deficiency taxes:

125 Supra at note 1.
126 Supra at note 1.
127 Exhibit "P-5"/Exhibits "R-11" and "R-11-A" to "R-11-C", supra at note 19.
128 Exhibit "R-9", supra at note 17, p. 338; BIR Records, p. 600.
129 Exhibit "R-10", supra at note 18; id., p. 603.
130 Exhibit "R-10-A", Division Docket, Volume I, p. 345; id., p. 594.

> ...
>
> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, **he shall first notify the taxpayer** of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.[131]
>
> ...

As can be gleaned from the foregoing, it is mandatory (unless the same falls under the noted exceptions) that taxpayers are first notified through PAN of respondent's findings. This is consistent with the oft-repeated principle that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with.[132]

Moreover, Section 3.1.6 of RR No. 12-99[133], as amended by RR No. 18-2013[134], reads, in part, as follows:

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131 Emphasis supplied and italics in the original text.

132 See *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, 10 July 2023.

133 Supra at note 106.

134 Supra at note 117.

> ...
>
> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> ...
>
> 3.1.6 *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**:
>
> ...
>
> (iii) Service by mail is done by sending a copy of the notice by **registered mail to the registered or known address of the party** with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice, may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC**, as amended, setting forth the **manner, place and date of service,** the name of the person/barangay official/professional courier service company who received the same and such other relevant information. **The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**[135]
>
> ...

Based on the foregoing provisions, one (1) of the recognized modes of service of PAN is *via* registered mail. Relatedly, under Section 3(v), Rule 131 of the Revised Rules on Evidence, as amended[136], a presumption arises that "a letter duly directed and mailed was received in the regular course of mail." This presumption is, however, disputable and a direct denial that the mail matter was received shifts the burden

[135] Emphasis supplied and italics in the original text.
[136] 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

to the party favored by the presumption to prove actual receipt by the addressee.[137]

As early as 2006, the Supreme Court, in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[138] (**Barcelon**), ruled that if the taxpayer denies ever having received an assessment notice from the BIR, the burden shifts to the BIR to prove that the notice was indeed received by the addressee. To discharge this burden, the BIR must present independent evidence, such as the registry receipt issued by the Bureau of Posts or the registry return card signed by the taxpayer or an authorized representative, showing that the assessment notice was sent to and received by the taxpayer. If such documents are unavailable, the BIR may submit a certification issued by the Bureau of Posts or other relevant documentation executed with its involvement. In *Barcelon*, the Supreme Court found BIR records showing the name of the taxpayer, the kind of tax assessed, the registry receipt number, and the date of mailing to be insufficient evidence of actual receipt by the taxpayer.

In the more recent case of *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*[139] (**Villanueva, Jr.**), citing *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[140] (**T Shuttle**), the Supreme Court, reiterating the doctrine in *Barcelon*, clarified that **the mere presentation of registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer**.

Applying the foregoing principles to the present case, respondent failed to meet the burden of proof. Although respondent presented a copy of the registry receipt attached to the PAN[141], there was no evidence of actual receipt, as *none* of petitioner's authorized representatives signed the registry receipt to confirm the PAN's receipt. Additionally, the Affidavit of Service of PAN[142] does not verify petitioner's actual receipt. Similarly, the Report on Service by Mail/Courier dated

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137 See *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), 24 August 2020.
138 G.R. No. 157064, 07 August 2006.
139 G.R. No. 249540, 28 February 2024.
140 Supra at note 137.
141 Exhibit "R-9", supra at note 17, p. 338; BIR Records, p. 600.
142 Exhibit "R-10", supra at note 18; id., p. 603.

16 December 2020[143] for the PAN is insufficient to demonstrate actual receipt by petitioner. Not only was this report internally prepared by respondent, but it also fails to show that any of petitioner's authorized representatives received the PAN. Furthermore, the said Report conspicuously omits petitioner's complete address, listing only "Baranka Ilaya, Mandaluyong City," which differs significantly from petitioner's registered address, "3/F Globe Telecom Tower 1, Pioneer [Highlands] cor. Madison Sts., Brgy. Barangka Ilaya [1550] Mandaluyong City." This complete address was accurately included in the Report on Service by Mail/Courier dated 08 January 2021[144] for the FAN, which petitioner duly received. In addition, aside from the registry receipt attached to the PAN, the Affidavit of Service of PAN, and the Report on Service by Mail/Courier, respondent presented no other independent or competent evidence to establish petitioner's actual receipt of the PAN.

Indeed, as ruled in *T Shuttle* and *Villanueva, Jr.*, respondent's mere presentation of the registry receipt does not automatically prove actual receipt by the taxpayer. It must **be clearly shown that the assessment notices were properly served on and received by the taxpayer or its duly authorized representative**. This exacting standard upholds the due process requirement that the taxpayer be informed of the law and the facts on which the assessment is based; otherwise, the assessment shall be void.

The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.[145]

Clearly, respondent violated petitioner's right to due process by issuing the FLD/FAN without first serving and confirming receipt of the PAN. Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements outlined in Section 228[146] of

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143 Exhibit "R-10-A", supra at note 130.
144 Exhibit "R-11-E", Division Docket, Volume I, p. 355; BIR Records, p. 624.
145 *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022, citing *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, 22 November 2017.
146 Supra at p. 23.

the NIRC of 1997, as amended, and RR No. 12-99[147], as amended by RR No. 18-2013[148], is void and produces no effect.[149]

Due to the nullity of respondent's deficiency tax assessments, it becomes unnecessary for this Court to address the other issues raised.

**WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Broadcast Enterprises & Affiliated Media (BEAM), Inc. on 20 December 2021 is hereby **GRANTED**. Accordingly, the deficiency tax assessments embodied in the Final Decision on Disputed Assessment dated 12 November 2021, indicating petitioner's supposed deficiency tax liabilities in the aggregate amount of ₱7,399,669.66, inclusive of interest, for the taxable year (TY) 2017, is hereby **CANCELLED** and **SET ASIDE**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

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147 Supra at note 106.

148 Supra at note 117.

149 *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, supra at note 132, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, 03 October 2018.

**LANEE S. CUI-DAVID**
Associate Justice

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice