REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2149** (CTA CASE NO. 9019)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
BOSTIK PHILIPPINES, INC., Respondent.	Promulgated: JAN 14 2021 4:03 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by the petitioner Commissioner of Internal Revenue (CIR) under Sections 3(b) and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court, which seeks to nullify the following:

1. March 5, 2019 Decision[1] of the CTA Special Third Division,[2] the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review dated March 27, 2015 filed by petitioner Bostik Philippines, Inc. is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice, the Assessment Notices/Demand Letter Nos. 43-195 for VAT and income tax, the Preliminary Collection Notice dated June 2, 2009, and the Demand Before Suit dated November 26, 2014 are **CANCELLED** and **SET ASIDE**.

[1] Annex A, Petition for Review, *Rollo*, pp. 30-48.
[2] Penned by Associate Justice Esperanza R. Fabon-Victorino with a Separate Concurring Opinion by Associate Justice Ma. Belen M. Ringpis-Liban.

SO ORDERED."

2. September 12, 2020 Resolution[3] denying the Motion for Reconsideration of the CIR for lack of merit.

THE FACTS

The facts, which are not disputed, are narrated by the Court *a quo* as follows:

> "In this Petition for Review dated March 27, 2015, petitioner Bostik Philippines, Inc., prays for the cancellation and withdrawal of the Assessment/Demand Letter No. 43-195 (FAN), the Preliminary Collection Notice dated June 2, 2009, and the Demand Notice Before Suit dated November 26, 2014.
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> Petitioner Bostik Philippines, Inc. is a domestic corporation registered with the Philippine Securities and Exchange Commission (SEC), with principal office address at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City. It is registered with the Bureau of Internal Revenue (BIR) since July 21, 2000, as evidenced by its Certificate of Registration No. OCN0000268520.
>
> On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On July 7, 2007, petitioner received at its office located at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City [a] Letter Notice No. 043-AS-05-00-00069 dated April 30, 2007 from respondent informing about its alleged value-added tax (VAT) deficiency and invited it to a conference to dispute his finding.
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> On September 22, 2008, petitioner received from respondent, through the BIR Revenue District Office (RDO) No. 43, a Post Reporting Notice (PRN) pursuant to the Letter Notice No. 043-AS-05-00-00069, stating that the result of the investigation on its alleged tax liabilities for the year 2005 has been prepared. With the PRN was the computation of petitioner's alleged deficiency income tax (IT) and VAT liability. Petitioner was given ten (10) days from notice to discuss the said finding with BIR RDO No. 43.
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> On October 2, 2008, petitioner filed with respondent a letter-reply dated October 1, 2008 inquiring about the basis of the amounts indicated in the PRN and requesting for a conference with the assigned revenue officer.

[3] Annex B, Petition for Review, *Rollo*, pp. 53-57.

On October 17, 2008, petitioner submitted a schedule of its importations from April 1, 2005 to March 31, 2006 with the corresponding photocopies of importation documents.

Thereafter, respondent issued a Preliminary Assessment Notice (PAN) dated January 5, 2009, a Final Assessment Notice (FAN) with Details of Discrepancies, and a Formal Letter of Demand (FLD), all dated January 23, 2009. However, the address appearing in the said notices was 199 Lemon Square Bldg., Edsa, Pasig City.

Respondent also issued Final Assessment Notices (FAN) with Details of Discrepancies and Formal Letter of Demand both dated January 23, 2009 addressed to Global Brands Company, Inc., 2nd Floor SBBC Bldg. Shaw Blvd., Pasig City.

On June 15, 2009, petitioner received a Preliminary Collection Letter (PCL) dated June 2, 2009 signed by Revenue District Officer Rey Asterio L. Tambis of RDO No. 43, informing it that an assessment notice dated January 23, 2009 was sent to it requesting payment of its alleged deficiency tax liabilities within ten (10) days from such receipt.

On July 15, 2009, petitioner protested the said PCL, on the ground that no FLD and FAN were issued and served upon it in violation of its right to due process.

On February 27, 2015, petitioner received from respondent a Demand Before Suit dated November 26, 2014 requiring it to pay its alleged tax liabilities in the amount of ₱29,740,623.06.

Petitioner deemed the said Demand Before Suit as a denial of its Protest filed on July 15, 2009. Thus, on March 27, 2015, petitioner lodged the instant Petition for Review.

Petitioner claims that its right to due process was violated as neither the PAN, FAN, and FLD was served upon it rendering the subject assessment void. With the void assessment, the subsequent issuance of the PCL and Demand Before Suit were likewise void.

In his Answer, respondent argues that the Court no longer has jurisdiction over the case since the assessment already gained finality for failure of petitioner to timely assail his inaction on its protest after the lapse of the 180-day period as required under Section 228 of the NIRC, as amended.

Also contrary to petitioner's claim, the PAN, FAN, and FLD, all indicating the factual and legal bases of the assessment, were sent to petitioner using its address found in the BIR computer system. These notices were sent within the 10-year period to assess pursuant to Section 222 of the NIRC, as amended, since there was fraud in petitioner's declaration of sales.

On July 20, 2015, petitioner filed through registered mail a Reply reiterating its non-receipt of the PAN, FAN, and FLD, and respondent's failure to present evidence to justify the application of the 10-year prescriptive period to assess under Section 222 of the NIRC, as amended.

The Petition for Review was also timely filed from receipt of the Demand Before Suit, which it deemed as a denial of its protest against the assessment.

After the parties filed their Joint Stipulation of Facts and Issues, on January 25, 2016, a Pre-Trial Order was issued on March 2, 2015 terminating the pre-trial conference.

During trial, petitioner presented its Senior Vice President for Finance and Information Technology, **Gerald B. Dimalaluan,** as its lone witness. He testified that he handles for petitioner all tax matters including dealing with the BIR. On September 22, 2008, petitioner received an undated PRN from the BIR about its alleged internal revenue tax liabilities. The said PRN was addressed to Global Brands Company, Incorporated, which was the former company name of petitioner.

In response, petitioner filed a letter-reply on October 2, 2008 asking to clarify the amounts of its alleged tax liabilities. Upon verbal request, petitioner submitted documents on October 15, 2008. Nothing followed thereafter until June 15, 2009, when petitioner received a Preliminary Collection Letter (PCL) dated June 2, 2009, demanding payment of its alleged deficiency IT and VAT for the year 2005 within ten (10) days from receipt thereof.

During a conference with the BIR on June 17, 2009, petitioner's representatives were informed that the FAN and FLD had been issued. Claiming non-receipt of the said notices, petitioner's representatives were provided with the copies of the said FAN and FLD which appeared to have been sent to an address different from that of petitioner.

In its protest filed on July 1, 2009, petitioner reiterated non-receipt of the PAN, FAN, and FLD which appeared to have been sent to a wrong address.

Subsequently, respondent issued a Demand Before Suit dated November 26, 2014, requiring petitioner to pay its alleged tax liabilities in the amount of ₱29,740,623.06.

On February 27, 2015, petitioner filed with respondent a Letter-Reply dated February 27, 2015 to the Demand Before Suit.

After the termination of the witness' testimony, petitioner formally offered its evidence and rested its case as indicated in the Resolution dated June 27, 2016.

In support of its case, respondent presented Revenue Officers (ROs) Corazon G. Maravilla and John B. Bajador as his witnesses.

RO **Corazon G. Maravilla** testified that she continued the tax audit of petitioner for the year 2005 pursuant to the Letter Notice No. 043-AS-05-00-00069 dated April 30, 2007 and Memorandum dated October 27, 2008.

Per her review, the Letter Notice No. 043-AS-05-00-00069 dated April 30, 2007 was served on petitioner on July 7, 2007. This was followed by an undated PRN served on petitioner on September 22, 2008. In the

Memorandum dated November 3, 2008, she recommended that the case be forwarded to their Assessment Division for the issuance of corresponding assessment notices. She also learned from the record that the PAN and FLD were sent to petitioner by the BIR Assessment Division.

Admittedly, the Letter Notice and PRN were sent to 35th Floor Raffles Corporate Center Emerald Avenue Ortigas Center, Pasig City 1600. The PAN was however sent to 199 Lemon Square Building, EDSA, Pasig City.

One set of the FAN and FLD was sent to 2nd Floor SBBC Building, Shaw Boulevard, Pasig City and another set to 199 Lemon Square Building, EDSA, Pasig City.

It appears that petitioner has two (2) registered addresses in the BIR computer system, thus, the notices could be sent to either of the two. However, the address used in the Letter Notice and PRN was neither of two found in the BIR computer system.

The notation RTS-Insufficient Add placed by the Post Office on the PAN, means Return to Sender. The same notation appears on the FAN/FLD.

RO **John B. Bajador** testified that he enforced the collection of petitioner's deficiency taxes for the year 2005. Upon examination of the BIR Record, he learned that the PAN, FAN, and FLD issued in this case were all sent to petitioner at 199 Lemon Square Building, EDSA, Pasig City, which was the active address of petitioner per the BIR Integrated Tax System/BIR Registration System.

Since petitioner failed to pay its tax liabilities, he prepared the Preliminary Collection Letter (PCL) dated June 2, 2009 which the RDO signed and later sent to petitioner via registered mail.

On January 23, 2009, petitioner's representatives came to their office to inquire about the PCL. He informed them that the case was already at the collection stage as no valid protest was filed to refute it rendering the assessment final and demandable. Thereafter, he gave copies of the FAN and FLD to petitioner's representatives.

Witness Bajador however admitted that although the PAN, FAN, and FLD were sent via registered mail, they were not received by petitioner since they were sent to the wrong address, to wit: 199 Lemon Square Building, EDSA, Pasig City. Worse, the PCL was sent to an address different from that used in mailing the PAN, FAN, and FLD. Besides, per the BIR Integrated Tax System/BIR Registration System, petitioner has several registered addresses, which can be interchangeably used.

The witness also suspected that the confusion as to petitioner's registered address arose from the fact that petitioner filed its application for change of address with the wrong RDO. The application for change of address was received by the Collection Division of the BIR on August 7, 2009.

Respondent rested its case after all its documents formally offered were admitted in the Resolution dated January 5, 2018.

> The Court declared the case submitted for decision on March 13, 2018." (*Citations omitted*)

On March 5, 2019, the Court *a quo* promulgated its decision which *granted* the petition. It cancelled and set aside the Preliminary Assessment Notice (PAN), the Assessment Notices / Demand Letter Nos. 43-195 for VAT and income tax, the Preliminary Collection Notice dated June 2, 2009 and the Demand Before Suit dated November 26, 2014.[4]

On September 12, 2019, the Court *a quo* denied the CIR's Motion for Reconsideration.[5]

CTA En Banc Proceedings

On October 18, 2019, after an extension, petitioner CIR filed a Petition for Review assailing the decision of the Court *a quo mainly* on jurisdictional grounds.[6]

In a November 7, 2019 Resolution, the Court *En Banc* ordered the respondent to file a comment within ten (10) days from notice.[7]

With the filing of respondent's Comment/Opposition (Re: Petition for Review dated 17 October 2019) via registered mail on November 25, 2019 and considering that both parties decided to forgo mediation, the Court *En Banc* submitted the petition for decision.[8]

THE ISSUES

In assailing the March 5, 2019 Decision and September 12, 2019 Resolution, petitioner questions the jurisdiction of the court *a quo* based on the following grounds:

1. The court *a quo* has no jurisdiction over the original petition because:

    a. The assessment against the taxpayer has already become final, executory and demandable;[9] and, *[initials]*

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[4] Annex A, Petition for Review, *Rollo*, pp. 30-48.
[5] Annex B, Petition for Review, *Rollo*, pp. 53-57.
[6] *Rollo*, pp. 5-23.
[7] *Id.*, pp. 59-60.
[8] January 29, 2020 Resolution, *Rollo*, pp. 110-111.
[9] Petition for Review, *Rollo*, pp. 9-11.

b. The taxpayer failed to comply with the jurisdictional period to appeal as provided for in Section 11 of the Republic Act No. (RA) 1125 as amended by Section 9 of RA 9282.[10]

2. The court *a quo* erred in declaring the assessment void for the alleged failure on the part of the CIR to prove service of the assessment to the taxpayer.[11]

THIS COURT'S RULING

We resolve to *deny* the CIR's petition.

The issues are not novel as they have been raised in the petitioner's Answer and squarely addressed in the assailed decision.

First, the Court notes that there was no Letter of Authority (LOA) issued to validate the assessment made against the taxpayer, instead there was only a Letter Notice (LN) No. 043-AS-05-00-00069 dated April 30, 2007.[12] Clearly, the assessment issued against the taxpayer is void in the absence of an LOA.

Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —*
>
> (A) Examination of Returns and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, that failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> xxx xxx xxx"

Pursuant to said provision, an authorization from the CIR or from his duly authorized representative is needed in order to examine any taxpayer. In relation to Sections 10 and 13 of the 1997 NIRC, as amended, the authorization needed to examine any taxpayer is the Letter of Authority (LOA) and the CIR's duly authorized representative referred is the Revenue Regional Director:

[10] *Id., Rollo*, pp. 12-16.
[11] *Id., Rollo*, pp. 16-21.
[12] Exhibit R-1, BIR Records, p. 4.

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx xxx xxx.
>
> (c) Issue Letters of Authority for the examination of taxpayer within the region;
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> xxx xxx xxx."
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> "SEC. 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

From a reading of the foregoing provisions, it is evident that an LOA from the Revenue Regional Director is necessary before a Revenue Officer (RO) can audit the taxpayer's records, within the jurisdiction of the district in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due. Otherwise stated, an RO cannot examine a taxpayer or recommend the assessment of any deficiency tax due in the absence of a LOA. The absence of authorization or an LOA of an RO to examine taxpayers in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due cannot be overly emphasized. An RO authorized by an LOA in any district may examine taxpayers within the jurisdiction of the district in order to assess and collect the correct amount of tax in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

In the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[13] the Supreme Court clarified further that under RMO No. 32-2005, a previously-issued LN should first be converted to an LOA before an RO can proceed with the further examination and assessment of the taxpayer. In other words, an LN cannot replace an LOA:

> "Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN.

[13] G.R. No. 222743, April 5, 2017.

The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers' documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.

With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers issued LNs by reconciling various revenue issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.

xxx xxx xxx

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore, no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

xxx xxx xxx

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact, Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or

> investigation only for the purpose of disqualifying the taxpayer from amending his returns.
>
> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. <u>Simply put, LN is entirely different and serves a different purpose than an LOA.</u> <u>Due process demands, as recognized under RMO No. 32-2005, that after an LN has served its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.</u>" (*Underscoring supplied; citations omitted*)

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[14] the Supreme Court, citing Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the RRCTA, declared that the CTA can resolve the issue on the authority of the RO to conduct the audit, although the same was not raised by the parties in their pleadings or memoranda. For want of valid LOA, the Supreme Court in said case ultimately declared the assessment void.

Clearly, this assessment issued by the petitioner is void in the absence of an LOA.

Second, the evidence on record has sufficiently established that the Preliminary Assessment Notice (PAN) with stamp dated January 5, 2009,[15] the Final Assessment Notice (FAN) and the Formal Letter of Demand (FLD) dated January 23, 2009[16] were sent by the petitioner to the *wrong* addresses at 199 Lemon Square Building, EDSA, Pasig City *and* at 2nd Floor SBBC Building, Shaw Boulevard, Pasig City. Specifically, the trial court found that petitioner's own witness, RO John B. Bajador, himself admitted that "although the PAN, FAN and FLD were sent via registered mail, they were not received" by the taxpayer "since they were sent to the wrong address, to wit: 199 Lemon Square Building, EDSA, Pasig City. Worse, the PCL was sent to an address different from that used in mailing the PAN, FAN, and FLD."[17]

This error is all the more glaring considering that, previous to these notices, the CIR sent the Letter Notice (LN) No. 043-AS-05-00-00069 dated April 30, 2007[18] and the *undated* Post Reporting Notice (PRN)[19] to the

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[14] G.R. No. 183408, July 12, 2017.
[15] Exhibit R-3, BIR Records, pp. 34-35.
[16] Exhibit R-4-a, BIR Records, pp. 52-53.
[17] March 5, 2019 Decision, *Rollo*, p. 36.
[18] Exhibit R-1, BIR Records, p. 4.
[19] Exhibit R-2, BIR Records, p. 8.

taxpayer's registered address at 35th Floor Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City 1600.[20] Subsequently, the petitioner also sent the Preliminary Collection Letter (PCL) dated June 2, 2009[21] and the Demand Before Suit dated November 26, 2014[22] to *the same* registered address. Accordingly, the trial court concluded that because the taxpayer denied receipt of the PAN, FAN and FLD and the lapse in the mailing was admitted by the revenue officer, there was no valid service of the notices. In short, there was a violation of the taxpayer's right to due process, thus:

> "In the instant case, petitioner consistently denied receipt of the PAN, FAN, and FLD. In its Protest dated July 15, 2009, petitioner argued that it never received the PAN, FAN and FLD obviously because they were sent to the wrong address. Thus, it was incumbent upon respondent to prove, not only that the PAN, FAN, and the FLD were validly issued and mailed, but that they were duly received by petitioner.
>
> A revisit of the record of the case intriguingly shows that respondent issued the PAN on January 5, 2009 addressed to Global Brands Company, Inc., at 199 Lemon Square Bldg., EDSA, Pasig City. Subsequently, the FAN and the FLD, similarly dated January 23, 2009 were sent to Global Brands Company, Inc., at 199 Lemon Square Bldg., EDSA, Pasig City. Then another set of the January 23, 2009 FAN and FLD was sent to Global Brands Company, Inc. at 2nd Flr. SBBC Bldg. Shaw Blvd., Pasig City.
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> <u>The lapses committed in the mailing address of petitioner, intentionally or unintentionally, was punctuated by the admission of respondent's own witness RO Bajador who categorically declared that per BIR record, the PAN, FAN, and FLD were not received by petitioner</u>, thus:
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> xxx xxx xxx
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> <u>Moreover, petitioner's registered principal business address is at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City, the very same address used by petitioner in its BIR Certificate of Registration, Annual Income Tax Return for 2005 and Quarterly VAT Returns for 2005</u>.
>
> <u>This was the same address indicated in the following letters and notices sent by respondent to, and received by petitioner, to wit:</u>
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> 1. <u>Letter Notice No. 043-A-05-00-00069 dated April 30, 2007;</u>
> 2. <u>Post Reporting Notice;</u>
> 3. <u>Preliminary Collection Letter; and</u>
> 4. <u>Demand Before Suit.</u>
>
> Undeniably, respondent was well aware that all communications especially tax notices should be sent to petitioner's correct address at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City. For unknown reasons, the PAN, FAN, and FLD were sent to petitioner using different wrong addresses.

[20] Exhibit P-3, Division Docket, Vol. 1, p. 206-219; Exhibit P-9, Division Docket, Vol. 1, p. 226.
[21] Exhibit P-6, Division Docket, Vol. 1, p. 222; Exhibit R-12, BIR Records, p. 58.
[22] Exhibit P-11 and P-11-a, Division Docket, Vol. 1, pp. 237-238.

> As the PAN, FAN, and FLD were never received by petitioner, there was no valid service of said notices depriving petitioner of the facts and the law upon which the assessment issued against it was based in violation of its right to due process.
>
> Under the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void."[23] (*Underscoring supplied; citations omitted*)

The evidence convincingly supports the conclusion that because of petitioner's failure to properly serve the PAN, FAN and FLD, the taxpayer was *denied* due process. It lost the opportunity to respond to or contest the petitioner's findings as well as the opportunity to defend its position *on time*. As a consequence, it was able to mount a proper protest against the assessment, *not* soon after the issuance of the FAN and FLD in January 2009, *but only* after receipt of the PCL dated June 2, 2009, *about five months later*. Without a doubt, there were several violations of the substantive requirement in Section 228 of the 1997 NIRC as amended, and as implemented by Revenue Regulations No. 12-99:

> "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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> xxx xxx xxx
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> 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.
>
> 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 the one hundred eighty (180)-day period; otherwise, the

[23] *Rollo*, pp. 43-46.

decision shall become final, executory and demandable." (*Underscoring supplied*)

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties xxx.

xxx xxx xxx

3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof) xxx.

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended xxx." (*Underscoring supplied*)

Finally, in the consolidated cases of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[24] the Supreme Court emphasized the

[24] G.R. Nos. 215534 and 215557, April 18, 2016.

importance of observing due process particularly with respect to giving the taxpayer sufficient notice and opportunity to defend itself against an assessment. It also emphasized that that this requirement is mandatory, non-compliance of which would render the assessment *void*:

> "Central to the resolution of the issue is Section 228 of the NIRC and RR No. 12-99, as amended. They lay out the procedure to be followed in tax assessments. Under Section 228 of the NIRC, a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. In implementing Section 228 of the NIRC, RR No. 12-99 reiterates the requirement that a taxpayer must be informed in writing of the law and the facts on which his tax liability was based xxx:
>
> xxx xxx xxx
>
> The importance of providing the taxpayer of adequate written notice of his tax liability is undeniable. Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the facts and law on which it is made. Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile, Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA.
>
> The use of the word 'shall' in Section 228 of the NIRC and in RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him is mandatory. The requirement of providing the taxpayer with written notice of the factual and legal bases applies both to the FLD/FAN and the FDDA.
>
> Section 228 of the NIRC should not be read restrictively as to limit the written notice only to the assessment itself. As implemented by RR No. 12-99, the written notice requirement for both the FLD and the FAN is in observance of due process — to afford the taxpayer adequate opportunity to file a protest on the assessment and thereafter file an appeal in case of an adverse decision.
>
> To rule otherwise would tolerate abuse and prejudice. Taxpayers will be unable to file an intelligent appeal before the CTA as they would be unaware on how the CIR or his authorized representative appreciated the defense raised in connection with the assessment. On the other hand, it raises the possibility that the amounts reflected in the FDDA were arbitrarily made if the factual and legal bases thereof are not shown." (*Underscoring supplied; citations omitted*)

Based on the foregoing discussion, this Court finds no reversible error in the assailed decision and resolution of the CTA Special Third Division. ✓

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. Accordingly, the March 5, 2019 Decision and the September 12, 2019 Resolution are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice