REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CLARK WATER CORPORATION, Petitioner,	**CTA CASE NO. 8572**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA, ,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 10 2017 4:25 pm

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penalties, amounting to ₱7,132,540.56 for taxable year 2008, are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED."[2]

Respondent argues that the Court erred in granting the petition considering that respondent has sufficiently proved that the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) were duly served and received by petitioner.

According to respondent, when mail matter is sent by registered mail, there exists a presumption that it was received in the regular course of mail if it is proven that (a) the letter was properly addressed with postage prepaid and (b) that it was mailed.

Respondent maintains that on September 26, 2011, BIR Revenue Region 4 sent the PAN, addressed to petitioner's registered principal office, through registered mail on October 5, 2011 as evidenced by the Transmittal Sheet forwarded to the Administrative Division. He also alleges that the PAN was covered by Post Office Registry Receipt No. 455, with no indication that the PAN was "Returned to Sender".

Moreover, respondent avers that similarly, on November 16, 2011, FANs numbered 021A-R-0905009636 were issued and served through registered mail as evidenced by the Transmittal Sheet and Registry Receipt No. 638. Thus, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails.

Respondent submits that the *Onus Probandi* has already shifted to petitioner with the presentation of independent pieces of evidence to prove receipt by petitioner of the subject-mail matters.

Furthermore, respondent alleges that petitioner's convenient denial of the PAN and FAN should never be countenanced by the Court.

Lastly, respondent contends that petitioner's protest was filed only on May 24, 2012, which is clearly beyond the period prescribed

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[2] Docket (Vol. IV), p. 1933.

for an administrative protest. Thus, respondent avers that the instant Petition for Review must be denied.

Respondent's Motion for Reconsideration is bereft of merit.

The Court notes that respondent's arguments are mere rehash of the arguments he raised in his Answer, filed on February 16, 2013, which were already thoroughly threshed out in the assailed Decision.

It must be emphasized that the requirement of informing the taxpayer of the assessment is mandatory as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99, the pertinent portions of which are provided:

> "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
>
> **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.
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> 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 decision shall become final, executory and demandable." (*Emphasis ours*)

"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

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).

> The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Emphasis ours)*

The afore-quoted Section 228 clearly mandates that taxpayers must be informed of the facts and the law upon which the assessment is made; otherwise, the assessment will be void. In addition, the taxpayer is granted the opportunity to protest the assessment within thirty (30) days from receipt thereof and if the protest is denied or not acted upon by respondent within the required period of time, the taxpayer is given another remedy of filing an appeal before this Court. Similarly, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the FAN by respondent and the receipt thereof by the taxpayer as part of due process in the issuance of assessments.

Moreover, in the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[3], the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment, to wit:

> "xxx **the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party**. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
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> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the

[3] G.R. No. 155541, January 27, 2004.

> taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer.**" (*Emphasis ours*)

The Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*[4], held that procedures provided in Section 228 of the NIRC and Section 3 of RR No. 12-99 are mandatory, non-compliance therewith renders the assessment void.

In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[5], the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In the present case, petitioner denied receiving the PAN and FAN. Thus, it is the burden of respondent to prove the receipt by petitioner of the said notices.

Respondent failed in his burden. In order to prove that petitioner received the required PAN on October 5, 2011, respondent presented the following documents: 1) copy of PAN[6]; 2) transmittal sheet forwarded by the SIR-Assessment Division to the SIR-Administrative Division showing the endorsement of PAN for mailing[7]; and, 3) Registry Receipt No. 455[8] showing that the PAN was served to petitioner, via registered mail, on October 5, 2011.

However, respondent's witness, Mr. Ronnie S.J. Ocampo, testified that he was not able to obtain a certification from the post office confirming the service of PAN to petitioner on the ground that Mr. Alvin Palo, Postman in-charge, lost his logbook for October 2011. Thus, he caused him to execute an Affidavit of Loss to that effect.[9]

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[4] G.R. No. 197515, July 2, 2014.
[5] G.R. No. 157064, August 7, 2006, citing *Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc.,* G.R. No. L-38540, April 30, 1987.
[6] Exhibit "10".
[7] Par. 14 of Exhibit "22".
[8] Exhibit "12-a".
[9] Par. 20 of Exhibit "22".

Moreover, respondent failed to present Mr. Palo or any competent witness from the post office who can categorically testify that petitioner indeed received the subject PAN.

On the other hand, petitioner was able to prove its non-receipt of PAN through its document logbook[10], which shows that no letters or correspondences from respondent were received by petitioner from October 1, 2011 to December 31, 2011.

Considering the foregoing, respondent failed to discharge the burden of proving that the PAN was received by petitioner on October 5, 2011.

In the absence of a valid PAN, petitioner's right to due process was violated, thus, rendering the assessment null and void. Consequently, there is no factual and legal basis for respondent to formally demand the payment or to collect the deficiency taxes which are not covered by a valid PAN.

As to the FAN, the Court, found that the postman who certified that the FAN was served to petitioner did not take the witness stand to testify on such matter. Thus, respondent, likewise, failed to discharge the burden of proving that the FAN was received by petitioner on November 16, 2011.

To reiterate, "Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void."[11]

"An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the

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[10] Exhibit "K".

[11] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. 197515, July 2, 2014.

taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made."[12]

In this case, petitioner never received the PAN and the FAN. Thus, the assessment made by respondent against petitioner is void, as petitioner was not informed in writing of the law and the facts on which it was made.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on February 16, 2017.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[12] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.,* G.R. No. 198677, November 26, 2014.