REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

JOHNNY M. KING, JR.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9753

Members:

UY, *Chairperson*,
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, ***JJ.***

Promulgated:

DEC 04 2020
10:46 a.m.

x - x

DECISION

RINGPIS-LIBAN, *J.*:

This Petition for Review prays that the Commissioner of Internal Revenue's Decision dated November 17, 2017 ordering Petitioner to pay an aggregate amount of ₱40,325,186.32, representing deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and compromise penalty, for taxable year 2009, be reversed and set aside, and a new judgment be rendered exonerating Petitioner from the said tax liability for being void.[1]

THE PARTIES

Petitioner is Johnny M. King, Jr. with TIN: 100-098-875-000, Filipino, of legal age, married, and with office address at No. 720 Coromina St., Quiapo, Manila.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) who is duly appointed and empowered to perform the duties of his office,

[1] Summary of the Case, Pre-Trial Order dated July 25, 2018, Docket, p. 221.
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 213.

including, among others, the duty to act on disputed assessments, refunds of internal revenue taxes, fees or other charges as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS

On September 1, 2010, an electronic Letter of Authority (eLA) with Serial No. eLA2010-0013668/LOA-032-2010-00000093 was issued authorizing Revenue Officer (RO) Benilda Sanchez and Group Supervisor (GS) Charlito Samson, to examine the books of accounts and other accounting records for all internal revenue taxes of Petitioner for taxable year (TY) 2009 or from January 1, 2009 to December 31, 2009.[4]

Subsequently, on January 18, 2011, a Subpoena Duces Tecum (SDT) was issued by then Regional Director (RD) Alfredo V. Misajon, referencing LOA No. 2009-00023527 dated June 25, 2010.[5]

Thereafter, the Formal Assessment Notice (FAN)/Formal Letter of Demand (FLD) dated January 14, 2013 with Assessment Nos. 32-09-IT-4257, 32-09-VT-4258, and 32-09-WE-4259 was issued by OIC-RD Madulara for the alleged deficiency tax of ₱40,272,186.32, representing deficiency income tax, VAT, EWT, and compromise penalty, for taxable year 2009. The same was received by Petitioner on February 8, 2013.[6]

On February 26, 2013, Petitioner, through his representative, filed his protest against the said FAN/FLD.[7]

Petitioner then received on October 16, 2013 the Final Decision on Disputed Assessment (FDDA) issued by OIC-RD Madulara on October 9, 2013, affirming the FAN/FLD.[8]

Thereafter, on October 24, 2013, Petitioner, through his representative, filed with the Office of Respondent a Petition/Motion for Immediate Assistance as Part of Exhaustion of Administrative Remedies Prior to Filing of Case Before Other Judicial Bodies and Speedy Resolution and/or Legal Opinion dated October 23, 2013.[9]

[3] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 213.
[4] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 214.
[5] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 214.
[6] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 214.
[7] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 214.
[8] Par. 7, Summary of Admitted Facts, JSFI, Docket, p. 214.
[9] Par. 8, Summary of Admitted Facts, JSFI, Docket, p. 214.

However, despite the filing of the said Petition/Motion, a Preliminary Collection Letter (PCL) for the amount of ₱40,330,186.33 was issued against Petitioner on January 13, 2014.[10]

Thus, on January 27, 2014, Petitioner protested the PCL, in the letter dated January 17, 2014.[11]

Subsequently, on December 15, 2017, Petitioner's authorized representative, Ms. Ria A. Sablon, received Respondent's final decision dated November 17, 2017, denying Petitioner's protest against the assessment and collection of deficiency taxes for taxable year 2009.[12]

Petitioner filed the instant Petition for Review with this Court on January 15, 2018, questioning the validity of the audit process conducted by the BIR, including its resulting assessment notices and decisions.[13]

On March 9, 2018, Respondent filed his Answer[14]. As part of his special and affirmative defenses, Respondent alleged that:

a) the Post Reporting Notice (PRN) the BIR issued on July 23, 2012 was received by the taxpayer on July 31, 2012 through Ms. Arlene King informing him of the initial findings of deficiency taxes due; the Preliminary Assessment Notice (PAN) was also issued against Petitioner on December 20, 2012 to which he did not file his reply/protest. As no reply to the PAN was received, Regional Director Simplicio Madulara issued the FLD/FAN with Assessment No. 32-09-IT-4257, 32-09-VT-4258, and 32-09-WE-44259 all dated January 14, 2013, demanding payment of deficiency income tax, VAT, EWT and compromise penalties for TY 2009;

b) The assessment issued on January 14, 2013 is within the prescribed period in accordance with law since the prescriptive period for assessment is counted from the last day prescribed by law for the filing of the return until the issuance of the FAN, not the FDDA;

c) The failure of the RO to submit his report of audit/investigation within the 180-day period under Revenue Memorandum Order (RMO) No. 69-2010 does not invalidate the assessment since this is merely an internal requirement to be submitted to the immediate superior, not to the taxpayer, and RMO 44-2010 states that the consequence of failing to meet the 180-day deadline for submission of the report is the imposition of administrative sanctions against the RO, not the invalidation of the LOA;

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[10] Par. 9, Summary of Admitted Facts, JSFI, Docket, p. 214.
[11] Par. 10, Summary of Admitted Facts, JSFI, Docket, p. 214.
[12] Par. 11, Summary of Admitted Facts, JSFI, Docket, p. 215.
[13] Docket – Vol. 1, pp. 10 to 45; Par. 11, Summary of Admitted Facts, JSFI, Docket, p. 215.
[14] Docket, pp. 114 to 120.

d) There was no violation of Petitioner's right to due process in the issuance of the SDT since it referred to the manual LOA prepared prior to the implementation of the issuance of the eLA, mandated by RMO No. 44-2020 and the discrepancy arose because this case is one of the first cases where the BIR implemented the issuance of the electronic LOA;

e) It is by virtue of the protest Petitioner filed to the FLD that reinvestigation was made, and in accordance with the BIR's own rules[15] in cases of protested assessments, a change in the RO handling the case is merely a matter of course for a fresh set of eyes to examine the taxpayer's records; and

f) The assessment is presumed correct and made in good faith and the Petitioner has the burden of proof to impugn its validity, not only proving that the CIR is wrong, but also that the taxpayer is right.

Respondent transmitted the BIR Records of this case on March 23, 2018.[16]

The pre-trial conference was set and held on June 19, 2018.[17] Prior thereto, Respondent's Petitioner's Pre-Trial Brief was filed on June 13, 2018;[18] while the Petitioner's Pre-Trial Brief was submitted on June 14, 2018.[19]

The parties submitted their Joint Stipulations of Facts and Issues on July 4, 2018.[20] Subsequently, the Court issued the Pre-Trial Order dated July 25, 2018,[21] thereby deeming the termination of the Pre-Trial Conference.

The trial of the case then ensued.

During trial, Petitioner presented documentary and testimonial evidence. As for its testimonial evidence, Petitioner offered the lone testimony of Ms. Ria A. Sablon,[22] Petitioner's authorized representative to the BIR.

On September 27, 2018, Petitioner filed his Formal Offer of Documentary Evidence.[23] Respondent filed his Comment To Petitioner's Formal Offer of Documentary Evidence on October 8, 2018.[24] In the

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[15] See Paragraph 7 of the Policies and Procedures involved in the issuance of electronic LOAs and related audit polices of RMO No. 62-2010.
[16] Respondent's *Submission/Compliance* dated March 26, 2018, Docket, p. 126.
[17] Notice of Pre-Trial Conference dated March 19, 2018, Docket, pp. 123 to 124; Minutest of the hearing held on, and Order dated, June 19, 2018, Docket, pp. 198 and 202 to 203, respectively.
[18] Docket, pp. 185 to 191.
[19] Docket, pp. 192 to 197.
[20] Docket, pp. 213 to 219.
[21] Docket, pp. 221 to 229.
[22] Exhibit "P-11", Docket, pp. 204 to 212; Minutes of the hearing held on, and Order dated, September 17, 2018, pp. 238 to 239.
[23] Docket, pp. 240 to 242.
[24] Docket, pp. 344 to 345.

Resolution dated January 17, 2019,[25] the Court admitted Petitioner's Exhibits, *except* for Exhibit "P-5", for failure to present its original for comparison.

Respondent also presented documentary and testimonial evidence. For his testimonial evidence, Respondent presented the testimonies of the following individuals, namely: (1) Mr. Benhur C. Nacorda,[26] Mailing In-Charge of the BIR; (2) Ms. Edna Ortalla,[27] and Ms. Benilda Sanchez,[28] Revenue Officers of the BIR.

On October 24, 2019, Respondent filed his Respondent's Formal Offer of Evidence.[29] Petitioner then filed its Comment (To Respondent's Formal Offer of Evidence with Notice of Change of Address) on November 7, 2019.[30] In the Resolution dated November 28, 2019,[31] the Court admitted Respondent's Exhibits.

Petitioner filed its Memorandum on January 2, 2020,[32] while Respondent's Memorandum was filed on February 6, 2020.[33]

The Court deemed the instant case submitted for decision on February 12, 2020.[34]

THE ISSUES

The parties submitted the following issues for the Court's resolution, to wit:

1. Whether or not the Honorable Court has jurisdiction to entertain the instant Petition for Review;

2. Whether the alleged tax deficiency assessment for the year ending December 31, 2009 against [P]etitioner is valid or not[;]

3. Whether the alleged deficiency assessments from the year ending December 31, 2009 have factual and legal bases, and hence, have become final, executory and demandable.[35]

[25] Docket, p. 350.
[26] Exhibit "R-46", Docket, pp. 175 to 178; Minutes of the hearing held on, and Order dated, April 11, 2019, pp. 361 and 364, respectively.
[27] Exhibit "R-48", Docket, pp. 165 to 168; Minutes of the hearing held on, and Order dated, September 17, 2019, pp. 366 to 368.
[28] Exhibit "R-47", Docket, pp. 130 to 137; Minutes of the hearing held on, and Order dated, October 9, 2019, pp. 369 to 371.
[29] Docket, pp. 372 to 378.
[30] Docket, pp. 397 to 398.
[31] Docket, pp. 403 to 404.
[32] Docket, pp. 405 to 412.
[33] Docket, pp. 451 to 458.
[34] Resolution dated February 12, 2020, Docket, p. 460.
[35] Pars. 1 to 3, Statement of Issues, JSFI, Docket, p. 215.

THE ARGUMENTS OF THE PARTIES

Petitioner argues that no PAN was issued against Petitioner; that it was not afforded the benefit of due process as did not receive the PAN; and that the failure of the BIR to serve the PAN makes the FAN premature.

Moreover, Petitioner avers that the deficiency tax assessments against him are void for illegal issuance of the SDT, non-adherence by Respondent to the rules on LOA conversion, violations in the service of the SDT, and for being invalid and erroneous. Furthermore, Petitioner contends that no assessment has become final, demandable and executory, and therefore, enforcement of collection is invalid and without legal basis.

On the other hand, Respondent counter-argues that there was no violation of due process since the notices were duly received by Petitioner; that the deficiency tax assessment against Petitioner is valid; that the period to assess Petitioner's internal revenue taxes for taxable year 2009 has not yet prescribed; and that Petitioner is liable for deficiency income tax, VAT, EWT, and compromise penalties, for taxable year 2009, in the amount of ₱40,272,186.32.

THE RULING OF THE COURT

The instant Petition for Review is meritorious.

The Court has jurisdiction over the instant case.

The Court shall first determine whether it has jurisdiction to entertain the instant Petition for Review.

Respondent argues that the subject assessments have become final, executory, and demandable. According to Respondent, it is a well-established doctrine in taxation that an assessment, whether valid or void, shall become final and executory when no administrative protest is filed within thirty (30) days from receipt of the assessments.

The argument of Respondent is untenable.

Indeed, time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[36] Moreover, the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[37]

Relative thereto, Section 11 of RA No. 1125,[38] as amended by RA No. 9282,[39] reads:

> "SEC. 11. *Who May Appeal; Mode of Appeal, Effect of Appeal.* — **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** A Division of the CTA shall hear the appeal: x x x" *(Emphasis supplied)*

Based on the foregoing provision, a person adversely affected by a decision of Respondent has thirty (30) days within which to file a petition for review with this Court.

The receipt by Petitioner of Respondent's final decision dated November 17, 2017 on December 15, 2017[40] is the reckoning date for the commencement of the thirty (30)-day period to file his Petition for Review before the Court. Thus, Petitioner had thirty (30) days from December 15, 2017 or until January 14, 2018 within which to file his Petition for Review. However, since January 14, 2018 fell on a Sunday, the filing of the Petition for Review with this Court on the next working day, *i.e.*, on January 15, 2018,[41] was timely made, pursuant

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[36] China Banking Corp. vs. City Treasurer of Manila, G.R. No. 204117, July 1, 2015.
[37] Id.
[38] AN CREATING THE COURT OF TAX APPEALS.
[39] 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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[40] Par. 11, Summary of Admitted Facts, JSFI, Docket, p. 215.
[41] Par. 14, Summary of Admitted Facts, JSFI, Docket, p. 215.

to Section 1, Rule 22 of the Rules of Court.[42] Such being the case, the Court has jurisdiction over the instant Petition for Review.

Moreover, it must be pointed out that Petitioner was able to file an administrative protest against the subject tax assessments within the thirty (30)-day reglementary period. It is undisputed that Petitioner received the subject FAN/FLD on February 8, 2013.[43] Counting thirty (30) days therefrom, Petitioner had until March 10, 2013, within which to file his administrative protest. Considering that Petitioner, through his representative, filed his protest on February 26, 2013,[44] the same was timely made. Thus, contrary to the assertion of Respondent, the said tax assessments did not become final and executory. At this juncture, however, it must already be stated that the same tax assessments cannot attain finality for being void.

Respondent's failure to prove that the PAN was received by Petitioner renders the subject assessments void for violation of Petitioner's right to due process.

Petitioner argues that the testimonies of ROs Ortalla and Sanchez, and Mr. Lacorda, were insufficient to prove that he received a copy of the PAN, as Respondent claims, considering that they had no personal knowledge that the PAN was actually received by his authorized representative.

Respondent, on the other hand, avers that on December 20, 2012, the PAN was issued against Petitioner and served via registered mail and duly received by him through a certain Mr. Eden Zamora.

The Court finds merit in Petitioner's arguments.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides:

> "SEC. 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he <u>shall first notify</u> the taxpayer of his findings**: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:

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[42] Section 1. *How to Compute Time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day or the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period as thus computed, **falls on a Saturday,** a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day.**" *(Emphases added)*

[43] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 214.

[44] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 214.

x x x x x x x x x

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, <u>the taxpayer shall be required to respond to said notice</u>. 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 decision shall become final, executory and demandable." *(Emphases and underscoring added)*

Implementing the foregoing provision is Section 3.1.2 of Revenue Regulations (RR) No. 12-99. It provides:

"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:

x x x x x x x x x

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."

Based on the foregoing provisions, part of the due process requirement in the issuance of a deficiency tax assessment is the issuance and service of the PAN. Specifically, Respondent or his duly authorized representative, as the case may be, shall issue and serve to the taxpayer, at least by registered mail, a 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.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[45] the Supreme Court held:

"... **it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN.** The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**" *(Emphasis added)*

As a corollary, in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.* ("*GJM* case"),[46] the Supreme Court ruled as follows:

"If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. **It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to**

[45] G.R. No. 185371, December 8, 2010.
[46] G.R. No. 202695, February 29, 2016.

prove that the mailed letter was, <u>in fact</u>, received by the addressee.

To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card <u>which would have been signed by the taxpayer or its authorized representative</u>. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, <u>the release, mailing, or sending of the same must still be clearly and satisfactorily proved</u>.** Mere notations made without the taxpayer's intervention, notice of control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.

The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. **The CIR offered in evidence Transmittal Letter No. 282 dated April 14, 2003 prepared and signed by one Ma. Nieva A. Guerrero, as Chief of the Assessment Division of the BIR Revenue Region No. 8-Makati, to show that the FAN was actually served upon <u>GJM</u>. However, <u>it never presented Guerrero to testify on said letter, considering that GJM vehemently denied receiving the subject FAN and the Details of Discrepancies</u>.** x x x." *(Emphasis and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is clear that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was *actually* received by the addressee.

Furthermore, to prove the fact of mailing, Respondent must present the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would have been signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing.

In this case, Petitioner directly denies having received the subject PAN. Thus, the burden of proving his actual receipt of the PAN lies with Respondent.

To prove service of the subject PAN by registered mail, Respondent offered the following exhibits,[47] to wit:

Exhibit	Nature	Purpose
"R-14"[48]	Preliminary Assessment Notice dated December 20, 2012 (Attached to the BIR Records, pp. 301-404)	To prove that a Preliminary Assessment Notice with Details of Discrepancies was issued and served to [P]etitioner, with business address at 610 Quezon Bldv., Quiapo, Manila., on its proposed deficiency tax liabilities for taxable year 2009.
"R-42"[49]	Transmittal Mailing of PAN dated December 20, 2012 to Manila Central Post Office – **Faithful Reproduction of the Original**	To prove that the Preliminary Assessment Notice with attached Details of Discrepancies dated December 20, 2012 was mailed to [P]etitioner as evidence by Registry Receipt No. 918598.
"R-45"[50]	Registry Return Card of PAN Mailing – **Faithful Reproduction of the Original**	To prove that mail matter under Registry Receipt No. 918598 was received by [P]etitioner Johnny M. King, Jr. through a certain Eden Zamora.

Relative to the supposed service by registered mail of the PAN to Petitioner, respondent's witness, Mr. Nacorda, testified as follows during cross examination, to wit:

> "ATTY. AGAAB
> Q In question 7 of your Judicial Affidavit in your answer, you said in Exhibit 'R-45', the registry return receipt, it stated there that this was received by a certain Eden Zamora given the nature of this case, personal to the Petitioner Mr. King, would you know if this Eden Zamora is an authorized representative of Mr. King?

[47] Respondent's *Formal Offer of Evidence*, Docket, pp. 375 to 376.
[48] BIR Records, pp. 301 to 302
[49] Docket, p. 393.
[50] Docket, p. 395.

MR. NACORDA
A I assume that, that is the authorized representative because he is the one to receive and sign it with the return card.

ATTY. AGAAB
Q In the Special Power of Attorney presented, Ms. Eden Zamora was authorized by Mr. King to receive the PAN on his behalf?

MR. NACORDA
A No, sir.

ATTY. AGAAB
That is all, Your Honors.

ATTY. VILLAREAL
No re-direct, Your Honors.

JUSTICE LIBAN
You are testifying based on records?

MR. NACORDA
Yes, Your Honor.

JUSTICE LIBAN
You also said that you did not actually see the PAN with Details of Discrepancies dated December 23, 2012?

MR. NACORDA
Yes, Your Honor.

JUSTICE LIBAN
You just saw that on record in the BIR records?

MR. NACORDA
Yes, Your Honors as per office advice.

JUSTICE LIBAN
With regards to the mailing matter, the transmittal letter from the mailing of Preliminary Assessment Notice dated December 20 which marked also as Exhibit `R-42', that is also based on the BIR records?

MR. NACORDA
Yes, Your Honor.

JUSTICE LIBAN
You did not personally see the transmittal letter, I mean you did not personally mail it?

N

MR. NACORDA
No, Your Honor.

JUSTICE LIBAN
With regards to the Registry Return Card, that is also based on the BIR record?

MR NACORDA
Yes, Your Honor.

JUSTICE LIBAN
You have access to the BIR records because you are the mailing in charge of the Administrative Division Revenue Region No. 6, BIR, you have access to the BIR records in this case because of your position?

MR. NACORDA
A Yes, Your Honor.

JUSTICE UY
So because in your answer no. 2 you said that as a mailing in charge, my duty includes sending via registered mail, so, do you personally go to the post office or you assign somebody else?

MR NACORDA
A **Since this was dated December 20, 2012, I was not yet the one in charge, because I started last May 2017.**

JUSTICE UY
As mailing in charge?

MR NACORDA
Yes, Your Honor upon the retirement of Mr. Armando Macatangay.

JUSTICE UY
So, your duties as mailing in charge is you assumed or performed them only in the year?

MR NACORDA
A 2017

JUSTICE UY
While the mail matter is?

MR NACORDA
2012.

JUSTICE UY

But may I just be clarified, when you said my duty includes sending via registered mail, you personally go to the Post Office?

MR NACORDA

Yes, Your Honor.

JUSTICE UY

No further question, you are discharged. You may now take your seat, Mr. Nacorda

MR NACORDA

Thank you, Your Honor."[51] *(Emphases added)*

Thus, while the said Registry Return Card (Exhibit "45")[52] proves the fact of mailing in accordance with the *GJM* case, the supposed PAN (Exhibit "R-14")[53] and Transmittal Mailing of PAN dated December 20, 2012 to Manila Central Post Office (Exhibit "R-42")[54] are insufficient to establish that the said PAN was actually received by Petitioner. Moreover, similar to the *GJM* case, respondent never presented Mr. Armando Macatangay, who is Mr. Nacorda's supposed predecessor and preparer of the Transmittal Mailing of the PAN. Instead, respondent presented Mr. Nacorda, Mailing In-Charge at the BIR, who only assumed the position in 2017, while the subject PAN was purportedly received by Petitioner in 2012. In other words, although Mr. Nacorda stated in his Judicial Affidavit[55] that his duty includes sending by registered mail PAN with Details of Discrepancies, Assessment Notices, FLD with Details of Discrepancies and other correspondence to other taxpayers, it is clear that he only performed said duties after the subject Transmittal Mailing of the PAN was prepared and, thus, had no personal knowledge of the same. Thus, this Court finds that the release, mailing, or sending of the PAN, in this case, was ***not*** clearly and satisfactorily proved.

More importantly, even granting that there was indeed mailing of the subject PAN, it was never established that the person who received the same, *i.e.*, Mr. Eden Zamora, is the authorized representative of Petitioner.

Correspondingly, respondent failed to discharge the burden of proof to show that Petitioner in fact received the subject PAN.

Needless to state, the date of actual receipt of the PAN by Petitioner must be clearly shown, since it is only at that point when the 15-day period under

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[51] Transcript of Stenographic Notes taken during the hearing held on April 11, 2019, pp. 8 to 12.
[52] Docket, p. 395.
[53] *BIR Records*, pp. 301 to 304.
[54] Docket, p. 393.
[55] Exhibit "R-46, Docket, pp. 175 to 177.

Section 3.1.2 of RR No. 12-99, as part of the due process requirement in the issuance of a tax assessment, will commence, and only after the lapse thereof, will Petitioner be considered in default which justifies the issuance of the FAN.

To stress, under the earlier quoted Section 228 of the NIRC of 1997, in relation to Section 3.1.2 of RR No. 12-99, Petitioner is given a fifteen (15)-day period from receipt of the PAN within which to respond thereto, before the issuance of the FLD and FAN. Considering that Petitioner did not receive the PAN, he was not accorded the opportunity to refute the same before the subsequent issuance of the FLD and FAN against him.

Clearly, Petitioner's due process rights were violated in this case, not only because the subject PAN was not received by Petitioner, but more importantly because he was not given opportunity to respond to the same PAN before the issuance of the subject FLD and FAN.

Apropos, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[56] As such, it bears no valid fruit.[57]

Petitioner is not liable to pay the subject compromise penalty.

Lastly, despite the finding of the invalidity of the subject tax assessments, respondent erred in imposing the subject compromise penalty. RMO No. 19-2007[58] provides that the penalties therein are only amounts suggested in the settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It means that it is imposed only to avoid prosecution for violation of the provisions of the Tax Code.[59] Thus, the imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[60] Considering that respondent has not shown that Petitioner consented to the imposition of the compromise penalty, the compromise penalty cannot be validly imposed.

In fine, in view of the finding that the subject tax assessments are void for violation of Petitioner's right to due process, it is no longer necessary to address the other stipulated issues and other respective arguments raised by the parties.

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[56] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99, and 201418-19, October 3, 2018.
[57] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.
[58] SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
[59] *The Philippine International Fair, Inc. vs. Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[60] Refer to *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. 35266, January 21, 1991.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject tax assessments embodied in the FAN/FLD dated January 14, 2013, FDDA dated October 9, 2013, the PCL dated January 13, 2014, and respondent's final decision dated November 17, 2017, ordering Petitioner to pay an aggregate amount of ₱40,325,186.32 representing deficiency income tax, VAT, EWT, and compromise penalty, for taxable year 2009, are hereby **CANCELLED and SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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