REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

NEXT MOBILE, INC., *Petitioner,*	**CTA CASE NO. 8670**
- *versus* -	Members: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 10 2016 9:45 a.m.

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DECISION

BAUTISTA, J:

The Case

This case involves a Petition for Review[1] filed on July 5, 2013 pursuant to *Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[2], which seeks to annul the deficiency income tax and value-added tax ("VAT") assessments for calendar year ("CY") 2008 issued by respondent in the aggregate amount of Php68,678,397.39, inclusive of interest and compromise penalty.

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[1] *Records, CTA Case No. 8670, Vol. 1, Petition for Review ("PFR")*, pp. 6-36, with annexes.

[2] A.M. No. 05-11-07-CTA (2005). The relevant provision states:

> **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 of 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.

The Parties

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office address at Next Mobile Building 2244 España Avenue, Sampaloc City.[3] It is enfranchised under *Republic Act ("RA") Nos. 7301 and 7940* to construct, establish, operate, and maintain radio paging systems and communications services, and to install and operate corresponding radio transmitting and receiving stations and communication facilities in or outside the Philippines.[4] It is also duly registered with the Bureau of Internal Revenue ("BIR") to engage in the business of telecommunications, as shown in its Certificate of Registration.[5]

Respondent is the chief of the BIR with the power to issue notices of seizures. He may be served with orders and processes of the Court through the Legal Division of Revenue Region No. 6 at the BIR Regional Office Building, Solana corner Beatrico, Intramuros, Manila.[6]

The Facts

For CY 2008, petitioner filed with the BIR its Annual Income Tax Return ("ITR") and Quarterly VAT Returns, among other tax returns, on the dates prescribed by law.[7]

On July 22, 2009, respondent issued Letter of Authority ("LOA") No. 2007 00037750[8] for the examination of petitioner's books of accounts for CY 2008 for all internal revenue taxes, and the First Request for Presentation of Records[9]. Petitioner received the LOA and the First Request for Presentation of Records on even date.[10]

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[3] *Records, Vol. 1, Pre-Trial Order ("PTO")*, p. 1030.
[4] *Id.* at 1030-1031.
[5] *Id.* at 1031.
[6] *Id.*
[7] *Id.*
[8] *Bureau of Internal Revenue ("BIR") Records*, p. 19.
[9] *BIR Records*, p. 21.
[10] *Records, Vol. 1, PTO*, p. 1031; *BIR Records*, p. 19; *BIR Records*, p. 21.

On August 20, 2009, respondent issued the Second Request for Presentation of Records[11], which was received by petitioner on August 26, 2009.[12]

On September 15, 2009, petitioner filed a transmittal letter[13] with the BIR submitting documents in compliance with the First Request for Presentation of Records, which was received by respondent on even date.[14]

On February 3, 2010, respondent issued a Notice to Taxpayer[15], a Revalidation Notice[16], and a Final Notice for the presentation of books of accounts[17], all of which were received by petitioner on March 15, 2010.[18]

On March 23, 2010, petitioner filed a letter with the BIR stating that petitioner had already submitted some of the documents as shown in petitioner's September 15, 2009 letter, and requesting an extension of the period to submit additional documents.[19] Respondent received the letter on even date.[20]

On July 5, 2012, respondent issued the 1st Notice for collection of deficiency income tax and VAT in the aggregate amount of Php68,678,397.40, which was received petitioner on July 19, 2012.[21]

On July 24, 2012, petitioner filed a letter with the BIR stating that petitioner could not understand why the 1st Notice for collection was sent when petitioner had not received the Notice of Informal Conference ("NIC"), the Preliminary Assessment Notice ("PAN"), and the Final Assessment Notice ("FAN"); and requesting for a meeting.[22] Respondent received the letter on July 25, 2012.[23]

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[11] *Records, Vol. 2, Exhibit* "P-51," p. 1117; *BIR Records,* p. 22.
[12] *Records, Vol. 1, PTO,* p. 1031; *Records, Vol. 2, Exhibit* "P-51," p. 1117; *BIR Records,* p. 22.
[13] *Records, Vol. 2, Exhibit* "50," p. 1116.
[14] *Id., Vol. 1, PTO,* p. 1031.
[15] *Records, Vol. 1, PTO,* p. 1031; *Records, Vol. 2, Exhibit* "P-53," p. 1118; *BIR Records,* p. 26.
[16] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-54," p. 1120; *BIR Records,* p. 25.
[17] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-55," p. 1121; *BIR Records,* p. 205.
[18] *Records, Vol. 1, PTO,* pp. 1031-1032; *Records, Vol. 2, Exhibit* "P-53," p. 1118; *Records, Vol. 2, Exhibit* "P-54," p. 1120; *Records, Vol. 2, Exhibit* "P-55," p. 1121; *BIR Records,* pp. 25-26, 205.
[19] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit "P-56,"* p. 1122; *BIR Records,* p. 196.
[20] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-56," p. 1122; *BIR Records,* p. 196.
[21] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-57," p. 1123; *BIR Records,* p. 261.
[22] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-58," p. 1124; *BIR Records,* p. 262.
[23] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-58," p. 1124; *BIR Records,* p. 262.

On August 17, 2012, petitioner filed a letter with the BIR formally requesting for a reinvestigation and stating that petitioner will not consider respondent's July 5, 2012 letter as a final collection letter of the assessed taxes.[24] Respondent received the letter on even date.[25]

On May 14, 2013, respondent issued a Preliminary Collection Letter ("PCL"), which was received by petitioner on May 16, 2013.[26]

On May 24, 2013, petitioner filed a letter with the BIR reiterating its request for reinvestigation, which was received by respondent on even date.[27]

On June 13, 2013, respondent issued a Final Notice Before Seizure, which was received by petitioner on June 25, 2013.[28] Under the Final Notice Before Seizure, respondent advised petitioner to settle the deficiency income tax and VAT assessments for CY 2008 in the total amount of Php68,678,397.39, inclusive of interest and compromise penalty, broken down as follows:

Tax Type	**Basic Tax Due**	**Interest**	**Compromise**	**Total**
Income Tax	Php 40,384,898.40	Php 22,390,922.30	Php 50,000.00	Php 62,825,820.70
VAT	3,642,235.44	2,185,341.25	25,000.00	5,852,576.69
Total				**Php 68,678,397.39**

On July 5, 2013, or within thirty (30) days from receipt of the Final Notice Before Seizure, petitioner filed the instant Petition for Review[29].

On August 14, 2013, respondent filed his Answer interposing the following Special and Affirmative Defenses: (a) there was compliance with procedural due process in issuing the assessments;

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[24] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-59," p. 1125; *BIR Records,* p. 263.
[25] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-59," p. 1125; *BIR Records,* p. 263.
[26] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-60," p. 1126; *BIR Records,* p. 270.
[27] *Records, Vol. 1, PTO,* p. 1032; *Records, Vol. 2, Exhibit* "P-61," p. 1127; *BIR Records,* p. 273.
[28] *Records, Vol. 1, PTO,* p. 1032; *BIR Records,* p. 274.
[29] *Records, Vol 1, PFR,* pp. 6-36, with annexes.

(b) the assessments provide the legal and factual bases; and (c) the assessments became final and demandable.[30]

On September 2, 2013, petitioner filed by registered mail its Reply wherein it argued the following: (a) procedural due process was not complied with in the issuance of the alleged deficiency tax assessment; (b) respondent has the burden of proving that petitioner received the alleged deficiency tax assessment; (c) the period for respondent to issue the deficiency tax assessment has already prescribed; and (d) the deficiency tax assessment has not become final and demandable because it was never received by petitioner.[31]

Respondent and petitioner both filed their Pre-Trial Briefs on October 7, 2013.[32] On November 11, 2013, the parties filed by registered mail their Joint Stipulation of Facts and Issues ("JSFI").[33] Accordingly, a Pre-Trial Order was issued by this Court on November 20, 2013.[34]

On May 6, 2014, petitioner filed its Formal Offer of Documentary Evidence[35] offering *Exhibits* "P-1" to "P-69," inclusive of *Exhibits* "P-68-1"[36] and "P-69-1." This was resolved by the Court in a Resolution dated July 22, 2014[37], which admitted all of petitioner's evidence except for *Exhibits* "P-20," "P-25" to "P-27," "P-34," "P-35," "P-37," "P-42," "P-48," "P-49," "P-50," and "P-62."

On April 23, 2015, respondent filed his Formal Offer of Documentary Evidence[38] offering *Exhibits* "R-1" to "R-6," "R-12" to "R-24," and "R-26" to "R-29," with sub-markings. This was resolved by the Court in Resolutions dated June 30, 2015[39] and September 9, 2015[40], which admitted all of respondent's evidence except for

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[30] *Id., Answer,* pp. 42-47. Respondent failed to timely file her Answer, but filed a Motion to Admit Attached Answer on June 11, 2013, which the Court granted in a Resolution promulgated on August 14, 2013.
[31] *Records, Vol. 1, Reply,* pp. 653-663.
[32] *Id.* at 936-940, 941-959.
[33] *Id.* at 1019-1023.
[34] *Id.* at pp. 1030-1037.
[35] *Id., Vol. 2,* pp. 1046-1058.
[36] Actually marked as *Exhibit* "P-68-a." *See Records, Vol. 1,* p. 986; note in *Records, Vol. 2,* p. 1213.
[37] *Records, Vol. 2,* pp. 1213-1214.
[38] *Id.* at 1276-1284.
[39] *Id.* at 1342-1344.
[40] *Id.* at 1363-1365.

Exhibits "R-26," "R-26-a," "R-27," "R-27-a," "R-28," "R-28-a," "R-29," and "R-29-a."

In compliance with this Court's Resolution dated October 27, 2015[41], which ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof, petitioner filed its Memorandum on November 20, 2015[42], while respondent filed his Memorandum on December 3, 2015[43].

On December 11, 2015, this Court promulgated a Resolution submitting the case for decision[44]; hence, this Decision.

The Issues

The issues for consideration of this Court are, as follows:

1. WHETHER RESPONDENT CAN ISSUE THE FINAL NOTICE BEFORE SEIZURE WITHOUT ANY PRIOR SERVICE OF A NOTICE OF ASSESSMENT;

2. ASSUMING *ARGUENDO* THAT RESPONDENT HAS ISSUED A NOTICE OF ASSESSMENT FOR CY 2008, WHETHER SUCH ASSESSMENT WAS RECEIVED BY PETITIONER WITHIN THE THREE (3)-YEAR PRESCRIPTIVE PERIOD TO ASSESS;

3. WHETHER THE NOTICES AND CORRESPONDENCES FROM THE BIR ACTUALLY RECEIVED BY PETITIONER WILL CONSTITUTE AS A VALID NOTICE OF ASSESSMENT;

4. WHETHER THE DEFICIENCY TAX ASSESSMENTS UNDER ASSESSMENT NOTICE NOS. 32-08-IT-3227 AND 32-08-VT-3228 HAVE BECOME FINAL AND DEMANDABLE; AND

5. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX AND VAT FOR CY 2008.[45]

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[41] *Id.* at 1377.
[42] *Records, Vol. 2,* pp. 1384-1405.
[43] *Id.* at 1408-1419.
[44] *Id.* at 1421.
[45] *Records, Vol. 1, PTO,* p. 1032.

Petitioner's Arguments[46]

Petitioner avers that respondent cannot collect deficiency taxes against it as it never received a Notice of Assessment, in accordance with the procedural due process requirements provided under *Revenue Regulations ("RR") No. 12-99*[47], prior to respondent's issuance of the 1st Notice, PCL, and Final Notice Before Seizure. According to petitioner, it never received an NIC, PAN, and FAN. Assuming petitioner did not deny receipt of the PAN and the FAN, respondent cannot rely on the presumption that petitioner received the PAN and the FAN in the regular course of mail. In any event, respondent's witness from the Manila Central Post Office confirmed that petitioner did not receive the PAN and the FAN.

Petitioner further posits that even assuming *arguendo* that respondent issued a Notice of Assessment, the same was not received by petitioner within the three (3)-year prescriptive period for assessment. Further, petitioner argues that even assuming that the 1st Notice and/or the PCL can be considered the Assessment Notice, respondent failed to inform petitioner of the factual and legal bases of the assessment as required by *Section 228 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*[48]; hence, the assessment is void.

Respondent's Counter-Arguments[49]

Respondent counters that procedural due process was complied with in the issuance of the subject assessments, and that the same were issued by the BIR within the prescriptive period to make an assessment. Further, respondent submits that the assessments provide the factual and legal bases thereof as required under *Section 228 of the 1997 NIRC* and *RR No. 12-99*. Finally, respondent maintains that the subject assessments became final and demandable.

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[46] *Id., Vol. 2, Petitioner's Memorandum,* pp. 1388-1402.
[47] September 6, 1999.
[48] Republic Act No. 8424, as amended (1997).
[49] *Records, Vol. 2, Respondent's Memorandum,* pp. 1411-1418.

The Ruling of the Court

The main issue to be resolved by this Court is whether the deficiency income tax and VAT assessments made by respondent against petitioner for CY 2008 are valid and enforceable. The Court answers in the negative - the assessments are void and unenforceable.

Petitioner was not validly served the assessments, neither was it informed of the bases for such assessments.

It is elementary that a taxpayer must actually receive any assessment issued by the CIR in order for the same to be valid.[50] While the presumption exists that constructive service of an assessment - provided the same is properly addressed with postage prepaid and is actually mailed - is received by the taxpayer in the ordinary course of mail, the same is merely a disputable presumption, which can be directly denied by the taxpayer.[51] In the event wherein the taxpayer directly denies receipt of the assessment, the CIR has the burden of proving that the assessment was indeed received by the taxpayer.[52]

The facts of this case show that the assessments made against petitioner, and the subsequent attempt to collect thereon, were made in violation of petitioner's right to due process. Petitioner had no opportunity to assail the assessment made by respondent as petitioner did not receive the PAN and/or the FAN. Petitioner's

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[50] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126; *Estate of the Late Juliana Diez Vda. De Gabriel v. CIR*, G.R. No. 155541, January 27, 2004, 421 SCRA 266; *CIR v. United International Pictures AB*, CA-G.R. SP No. 73200, June 22, 2006; *Pundanera v. CIR*, CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR*, CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR*, CTA Case No. 8264, May 19, 2014.
[51] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126; *CIR v. United International Pictures AB*, CA-G.R. SP No. 73200, June 22, 2006; *Pundanera v. CIR*, CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR*, CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR*, CTA Case No. 8264, May 19, 2014.
[52] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126; *CIR v. United International Pictures AB*, CA-G.R. SP No. 73200, June 22, 2006; *Pundanera v. CIR*, CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR*, CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR*, CTA Case No. 8264, May 19, 2014.

witness, Mr. Patricio S. Carlos, testified that petitioner has never transferred its business address.[53] Moreover, petitioner's witness, Ms. Leticia Bello, confirmed that petitioner did not receive the PAN or the FAN from respondent.[54] Both petitioner's witnesses, Mr. Carlos and Ms. Bello, likewise testified that all correspondences from respondent, which were received by petitioner, were received by latter through personal service[55].

Considering that petitioner denied having received the assessment, the burden is on respondent to prove, with substantial evidence, the receipt thereof by petitioner. As discussed above, the presumption of regularity in the ordinary course of mail is merely disputable. Thus, when the taxpayer-addressee denies receipt of the disputed assessment issued by the CIR - delivered and served through registered mail - the burden of proof is now shifted to the CIR to present and offer evidence to prove that the same was duly delivered and actually received by the taxpayer-addressee. However, the Court notes that respondent in this case failed to present evidence that the assessments, which were sent by registered mail, were actually delivered and received by petitioner. In fact, respondent's witness, Mr. Armando C. Macatangay, testified that he did not have evidence showing that petitioner received the assessments which were sent by registered mail, thus:

> ATTY. OLANDESCA
>
> Q. And in this connection did you received [*sic*] a registry return receipt with number 9000512 from the post master showing that Next Mobile actually receive [*sic*] the preliminary assessment notice?
>
> ATTY. CAÑERO
>
> May I know...
>
> JUSTICE LIBAN
>
> The registry return card. If you receive [*sic*] the return card.

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[53] *Records, Vol. 1, Exhibit* "P-68," Q&A No. 13, p. 977.
[54] *Id., Exhibit* "P-69," Q&A No. 23, p. 995.
[55] *Records, Vol 1, Exhibit* "P-68," Q&A No. 51, p. 985; *Records, Vol. 1, Exhibit* "P-69," Q&A No. 31, p. 996.

MR. MACATANGAY

A. No return card, your Honors.

JUSTICE LIBAN

No return card. Okay.

ATTY. OLANDESCA

Q. And Mr. Witness, you also mentioned in your final assessment notice that you sent the final assessment notice through registered mail and the registry receipt No. 901987 and by depositing a copy by the Manila Central Post Office in a sealed envelope, is this correct?

MR. MACATANGAY

A. Yes, sir.

ATTY. OLANDESCA

Q. And do you recall receiving registry return receipt with no. 901987 from the post master showing that Next Mobile actually received the final assessment notice with formal letter of demand?

JUSTICE LIBAN

It's the return card, did you receive the return card for this specifically [*sic*] registry mail?

MR. MACATANGAY

A. None, your Honors.

JUSTICE LIBAN

None, so okay.

ATTY. OLANDESCA

Q. Do you have any prove [*sic*] Mr. Witness, that may prove that Next Mobile actually receive [*sic*] the preliminary assessment notice, the final assessment notice with the formal letter of demand?

MR. MACATANGAY

A. No, sir.

xxx xxx xxx[56]

Respondent alleges that petitioner no longer operates at its registered address. However, the records show that petitioner personally received communication from respondent at petitioner's registered address (*e.g.*, First Request for Presentation of Records, Second Request for Presentation of Records, Revalidation Notice, Final Notice Before Subpoena, PCL, Final Notice Before Seizure).[57] Hence, respondent's argument that petitioner can no longer be found at its registered address cannot be countenanced.

Meanwhile, the Court notes that even if the letters and notices issued by respondent - which were actually received by petitioner - were sufficient to advise petitioner of the assessments made against it, the same do not state the facts and laws on which the assessments were based as, at most, the Final Notice Before Seizure only informed petitioner of the year, the kinds of taxes, and the amounts being assessed. Petitioner's right to due process was violated as it was not informed of the laws and the facts on which such assessments were being issued by respondent, in violation of *Section 228 of the 1997 NIRC* which provides:

> **Sec. 228. *Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases
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> 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.
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> xxx xxx xxx[58]

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[56] *Transcript of Stenographic Notes, December 4, 2014*, pp. 16-17; underscoring ours.
[57] *Records, Vol 1, Exhibit* "P-68," Q&A No. 51, p. 985; *Records, Vol. 1, Exhibit* "P-69," Q&A No. 31, p. 996.
[58] Underscoring ours.

In *CIR v. Metro Star Superama Inc.*[59], the Supreme Court emphasized the importance of serving the assessment, which states the facts and the law on which the assessment is based, on the taxpayer in this wise:

> From the provision quoted above, 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.

Considering that petitioner did not actually receive the assessment, the same cannot be considered final, executory, and demandable. Therefore, respondent's right to collect thereon has no basis.

In *CIR v. BASF Coating + Inks Phils., Inc.*[60], the Supreme Court ruled that a taxpayer cannot be deprived of his property if the basis for the collection is an invalid assessment, *i.e.*, when the taxpayer's right to due process is violated because no valid notice of assessment was sent to such taxpayer. The Supreme Court held:

> It might not be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. <u>An invalid assessment bears no valid fruit</u>. <u>The law imposes a substantive, not merely a formal, requirement</u>. <u>To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in</u>

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[59] G.R. No. 185371, December 8, 2010, 637 SCRA 633.
[60] G.R. No. 198677, November 26, 2014, 743 SCRA 113.

> 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 taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.
>
> xxx xxx xxx
>
> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[61]

From the foregoing, the conclusion can be made that no valid assessment was issued by respondent as petitioner did not receive the same. Neither was petitioner informed of the facts and the laws on which the assessments were based. Thus, the assessments against petitioner for CY 2008 are clearly void for being violative of petitioner's right to due process.

Respondent's right to issue an assessment against petitioner for CY 2008 has already prescribed.

Section 203 of the 1997 NIRC states that, as a rule, internal revenue taxes shall be assessed within three (3) years from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later, thus:

> **Sec. 203.** ***Period of Limitation Upon Assessment and Collection.*** - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period:

[61] Underscoring ours.

> *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[62]

Considering that the instant case involves deficiency income tax and VAT, the prescribed due dates for filing of the respective returns, which shall be used as bases for the counting of the three (3)-year prescriptive period, varies.

With regard to the income tax assessment, *Section 77(B) of the 1997 NIRC* provides that the filing of the ITR shall be on or before the fifteenth (15th) day of April, or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be, to wit:

> **Sec. 77.** ***Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*** **-**
>
> xxx xxx xxx
>
> (B) **Time of Filing the Income Tax Return.** - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

On the other hand, with regard to the VAT assessment, *Section 114(A) of the 1997 NIRC* provides that the filing of the Quarterly VAT Returns must be made within twenty-five (25) days after the close of each taxable quarter, as follows:

> **Sec. 114.** ***Return and Payment of Value-added Tax.*** **-**
>
> (A) **In General.** - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five

[62] Underscoring ours.

(25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Based on the foregoing, the relevant dates for the determination of the timeliness of the income tax and VAT assessments against petitioner for CY 2008 are summarized, as follows:

Tax Return	**Exhibit**	**Date of Actual Filing**	**Last Day to File Return**	**Last Day to Assess**
Income Tax - Annual filing				
ITR	P-63[63]	April 15, 2009	April 15, 2009	April 15, 2012
VAT - Quarterly filing				
1st Quarter	P-64[64]	April 30,2008	April 25, 2008	April 30, 2011
2nd Quarter	P-65[65]	July 25, 2008	July 25, 2008	July 25, 2011
3rd Quarter	P-66[66]	October 22,2008	October 27, 2008[67]	October 27, 2011
4th Quarter	P-67[68]	January 20,2009	January 26, 2009[69]	January 26, 2012

Considering that petitioner did not receive a valid PAN and/or FAN and the end of the three (3)-year prescriptive period has long ended, respondent's right to issue any deficiency income tax and VAT assessment against petitioner for CY 2008 has already prescribed.

Accordingly, the foregoing show that the assessments made against petitioner for CY 2008 are void and cannot be final, executory, and demandable.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments covering income tax and value-added tax for calendar year 2008 in the total amount of Php68,678,397.39, inclusive of interest and compromise penalty, are hereby **CANCELLED** and **WITHDRAWN**.

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[63] *Records, Vol. 2,* pp. 1129-1132.
[64] *Records, Vol. 2,* pp. 1139-1140.
[65] *Id.* at 1141-1142.
[66] *Id.* at 1143-1144.
[67] October 25, 2008 fell on a Saturday. According to the BIR 2008 Tax Calendar, the deadline for the filing and payment of the 3rd Quarter VAT Return for CY 2008 is on October 27, 2008.
[68] *Records, Vol. 2,* pp. 1145-1146.
[69] January 25, 2009 fell on a Sunday. According to the BIR 2009 Tax Calendar, the deadline for the filing and payment of the 4th Quarter VAT Return for CY 2008 is on January 26, 2009.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice