

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2551
(CTA Case No. 9360)

Present:

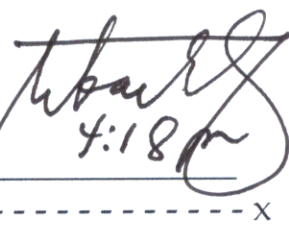
-versus-

DEL ROSARIO, *PJ*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ*.

LINDEN SUITES, INC., as
represented by EUGENE U.
BALCOS,
Respondent.

Promulgated:

JUL 04 2023


4:18 pm

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DECISION

REYES-FAJARDO, *J.*:

We are called upon to rule on the Petition for Review dated December 22, 2021,¹ challenging the Decision² dated May 20, 2021 and Resolution³ dated November 4, 2021, rendered by the Court in Division in CTA Case No. 9360. The challenged Decision and Resolution nullified the deficiency tax assessments issued by the

¹ *Rollo*, pp. 47-52.

² *Id.* at pp. 54-76.

³ *Id.* at pp. 78-82.

Commissioner of Internal Revenue against Linden Suites, Inc. covering fiscal year (FY) ending September 30, 2012.

The facts follow.

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City. He is vested with authority to administer and enforce all laws pertaining to internal revenue taxes and has jurisdiction to decide on disputed tax assessments in accordance with law and the rules and regulations related thereto.

Respondent Linden Suites, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at No. 37 San Miguel Avenue, Ortigas Center, Pasig City.

On October 2, 2013, respondent received a Letter of Authority No. LOA-43A-213-00000719 dated September 26, 2013, authorizing Revenue Officer (RO) Carmencita Villanueva (Villanueva), under the supervision of Group Supervisor (GS) Antonino Ilagan (Ilagan), of Revenue District No. 43A-East Pasig to examine/audit respondent's internal revenue taxes for the period from October 1, 2011 to September 30, 2012.

As a result of the audit and examination of respondent's records, petitioner allegedly issued on December 4, 2015, a Preliminary Assessment Notice (PAN), with attached Details of Discrepancies, which proposed to assess respondent for deficiency income tax, value-added tax (VAT), and documentary stamp tax (DST) for the fiscal year ending September 30, 2012, in the aggregate amount of Eleven Million Seventy Thousand Nine Hundred Ninety-Seven Pesos and 50/100 (₱11,070,997.50), inclusive of interest and penalties. Petitioner claims that respondent received the aforesaid PAN on December 4, 2015.

On December 22, 2015, respondent received a Formal Letter of Demand (FLD), with attached Details of Discrepancies, and Assessment Notices, all dated December 22, 2015, which requested respondent to pay the alleged deficiency income tax, VAT, and DST

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for fiscal year ending September 30, 2012, in the total amount of Eleven Million One Hundred Eighty-Five Thousand Eighty-Two Pesos and 78/100 (P11,185,082.78), inclusive of interest and surcharge, broken down as follows:

Tax Type	Amount
Income Tax	₱6,044,231.19
VAT	2,712,863.43
DST	2,427,988.16
Total:	₱11,185,082.78

On January 8, 2016, respondent filed a Letter Protest to the FLD, requesting Officer-in-Charge/Assistant Chief of the Assessment Division, Analyn S. Chu, to re-investigate the assessment issued against it.

On February 5, 2016, respondent received a Letter from Regional Director Alfredo V. Misajon (Misajon) of Revenue Region No. 7, stating that its failure to state the applicable laws, rules and regulations, or jurisprudence on which its administrative protest is based rendered the assessment final, executory and demandable.

On February 29, 2016, respondent sent a Letter addressed to then CIR, Kim S. Jacinto-Henares, requesting her to reconsider the denial of its protest, and to strike out the FLD she issued on December 22, 2015.

On April 28, 2016, respondent received a Letter from Regional Director Misajon, reiterating that the assessment against respondent had become final, executory and demandable, and notifying respondent that the entire tax docket of the case together with its Letter will be forwarded to the Collection Division.

On May 27, 2016, respondent filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9360.

On May 20, 2022, the Court in Division rendered the challenged Decision,⁴ the dispositive portion of which reads:

⁴ *Supra* note 2.

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WHEREFORE, premises considered, the Petition for Review filed on May 27, 2016 by [respondent] Linden Suites, Inc., as represented by Eugene U. Balcos is hereby **GRANTED**. Accordingly, the Letter dated January 27, 2016 and the Letter dated April 28, 2016, both signed by Regional Director Alfredo V. Misajon of Revenue Region No. 7 are hereby **SET ASIDE**. The Formal Letter of Demand with attached Details of Discrepancies dated December 22, 2015, and the Assessment Notices assessing petitioner for deficiency income tax, value-added tax, and documentary stamp tax for fiscal year ending September 30, 2012 in the total amount of **ELEVEN MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND EIGHTY-TWO PESOS AND SEVENTY-EIGHT CENTAVOS (P11,185,082.78)**, inclusive of interest and surcharge are **CANCELLED** and **WITHDRAWN**.

[Petitioner] Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes subject of the present case.

SO ORDERED.

Petitioner moved,⁵ but failed⁶ to secure a reversal of the challenged Decision; hence, the present recourse.

Petitioner maintains that the Court in Division lacks jurisdiction over CTA Case No. 9360. According to him, before the Court in Division may entertain his decisions involving disputed assessment, the taxpayer must file an administrative protest against the final assessment. Among the conditions for the validity thereof is that the taxpayer must state in his administrative protest the applicable law, rules and regulations, or jurisprudence on which said protest was based. Since respondent's protest-letter to the final assessment, filed with the BIR on January 8, 2016 failed to specify the legal basis why said assessment was erroneous or illegal, the effect is that *no* valid protest was filed before the Bureau of Internal Revenue, rendering the final assessment immutable; hence, the Court in Division lacks jurisdiction over respondent's appeal.

Granting the Court in Division has jurisdiction, petitioner asserts that the PAN was served to, and received by a certain Aeo-Jean Tanyag (Tanyag), respondent's alleged staff; thus, due process on the service of PAN under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, was duly complied with.

⁵ Respondent (now petitioner)'s Motion for Reconsideration (Decision dated May 26, 2021). Docket (CTA Case No. 9360), pp. 1071-1074.

⁶ *Supra* note 3.

Petitioner as well insists that the PAN was validly served upon respondent via registered mail.

All these points lead petitioner to conclude that respondent must be held liable for the deficiency tax assessment covering FY ending September 30, 2012.

On the other hand, respondent counters that it validly filed an administrative protest on the final assessment. Specifically, it received the FLD/FAN on December 29, 2015; hence, the timely filing of an administrative protest on January 8, 2016 converted such assessment to a disputed assessment. As petitioner's authorized representative denied its protest through a Letter it received on February 5, 2016, it timely filed an administrative appeal before petitioner, which the latter denied. In turn, petitioner's decision on the disputed assessment was also timely appealed before the Court in Division. As such, the Court in Division has jurisdiction over this case.

Respondent, too, mirrors the Court in Division's finding that no PAN was validly served to, and received by it, offensive of its right to due process on assessments under Section 228 of the NIRC, as amended, as implemented by Revenue Regulations (RR) No. 18-2013; thus, the nullification of petitioner's deficiency tax assessments issued against respondent for FY ending September 30, 2012 is in order.

RULING

We deny the Petition.

Section 228 of the NIRC, as amended,⁷ as implemented by Section 3⁸ of RR No. 12-99,⁹ as amended by RR No. 18-2013 govern

⁷ SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases: ...

...

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.

the due process requirement on assessment. Among the components thereof is that the taxpayer must be afforded the opportunity to ventilate its defenses on the PAN, within fifteen (15) days from receipt thereof, by way of a reply or response thereto.¹⁰ Contrariwise, the taxpayer's non-receipt of the PAN would be transgressive of its right to due process on assessment. *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*¹¹ elucidated on the *rationale* thereof in this wise:

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

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. ...

... (Boldfacing supplied)

8 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:

...

3.1.1 Preliminary Assessment Notice (PAN). – If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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

10 See *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021, whereby the Supreme Court ruled that the service of the PAN, as well as the taxpayer's opportunity to file a reply/response thereto within fifteen (15) days from receipt thereof is mandatory.

11 G.R. No. 249153, September 12, 2022.

Petitioner claims that the PAN was served upon respondent through: *one*, personal service, and received by the latter's alleged staff, Tanyag; and *two*, registered mail; precisely, due process on assessment was duly complied with. Respondent says otherwise, asserting that it never received the PAN, issued by the BIR; hence, there was violation of its right to due process.

We share respondent's view.

Ei incumbit probatio qui dicit, non que negat. He [or she] who asserts, not he [or she] who denies, must prove,¹² since, by the nature of things, he [or she] who denies a fact cannot produce any proof of it.¹³ Given that respondent disclaimed receipt of the PAN, petitioner must prove that there was actual receipt thereof, by the former or its duly authorized representative.

To prove valid personal service and actual receipt of the PAN by respondent or its duly authorized representative, petitioner proffered: *one*, PAN received by a certain Tanyag on December 4, 2015, with a receiving stamp thereon; and *two*, Affidavit of Service of PAN, executed by RO Villanueva and GS Ilagan, attesting that they personally served the PAN to respondent at its business address.

Glaringly, RO Villanueva and GS Ilagan are the persons clothed with personal knowledge on the events regarding the BIR's purported service of, and respondent's receipt of the PAN. These individuals failed to take the witness stand. Instead, petitioner picked RO Wilhelmina Rosario D. Padit (RO Padit) to identify and testify on the contents of said PAN and Affidavit of Service. RO Padit is *without* personal knowledge on the circumstances surrounding the purported service of and receipt by respondent of the PAN. Such being the case, the pieces of evidence adduced by petitioner to demonstrate service and receipt of the PAN are hearsay evidence. *Dela Llana v. Biong*¹⁴ confirmed:

However, even if we consider the medical certificate in the disposition of this case, the medical certificate has no probative value for being hearsay. **It is a basic rule that evidence, whether**

¹² See *Franco v. People*, G.R. No. 191185, February 1, 2016, citing *People v. Masalihit*, G.R. No. 124329, December 14, 1998.

¹³ See *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009.

¹⁴ G.R. No. 182356, December 4, 2013.

oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand....¹⁵

Being hearsay, petitioner's evidence, though admitted, has no credence for it has no probative value.¹⁶ Evidence, to establish a fact in issue, must not only be admissible—it must be able to convince.¹⁷ Through his presentation of hearsay evidence, petitioner failed to persuade us that there was valid personal service by the BIR, and receipt by respondent of the PAN.

The BIR, too, failed to validly serve the PAN, through registered mail, to respondent.

Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.¹⁸

*Commissioner of Internal Revenue v. T-Shuttle Services, Inc. (T-Shuttle)*¹⁹ further held that when a taxpayer denies having received the notices mailed by the BIR, the latter is required to identify and authenticate the signatures appearing on the registry receipt to determine whether the signatories thereon are the authorized representatives of the taxpayer concerned. Significantly, the Court in Division found that:

In the present case, while [petitioner] formally offered the Registry Return Receipt for the Service of the PAN as evidence, he failed to offer as evidence the testimony of the person who mailed the PAN. No witness was presented to identify the Registry Receipt

¹⁵ Boldfacing supplied.

¹⁶ *Republic v. Galeno*, G.R. No. 215009, January 23, 2017.

¹⁷ *People v. Ansano*, G.R. No. 232455, December 2, 2020.

¹⁸ See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018; *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; and *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 150764, August 7, 2006.

¹⁹ G.R. No. 240729, August 24, 2020.

and even authenticate the signature appearing thereon. Even a certification from the postmaster was neither offered as evidence.²⁰

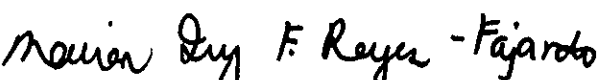
Therefore, we reject petitioner's assertion that there was valid service through registered mail of the PAN on respondent.

Finally, on the assumption that respondent failed to validly file an administrative protest on the FLD/FAN, said assessment never attained finality, because the BIR trampled respondent's right to due process. *T-Shuttle* pronounced:

Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord [the taxpayer] due process in their issuance, the CIR's argument necessarily fails.


WHEREFORE, the Petition for Review dated December 22, 2021, in CTA EB No. 2551, is **DENIED**. The Decision dated May 20, 2021 and Resolution dated November 4, 2021, rendered by the Court in Division, in CTA Case No. 9360, are **AFFIRMED**.

SO ORDERED.

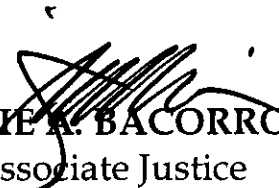

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE R. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
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