



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, G.R. No. 240729

Petitioner, Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS,
BALTAZAR-PADILLA,* JJ.

- versus -

T SHUTTLE SERVICES, INC.,
Respondent.

Promulgated:

24 AUG 2020

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RESOLUTION

INTING, J.:

This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR) against T Shuttle Services, Inc. (respondent) assailing the Decision² dated April 3, 2018 and the Resolution³ dated July 16, 2018 issued by the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1565 (CTA Case No. 8650).

* On official leave.

¹ *Rollo*, pp. 29-56.

² *Id.* at 64-94; penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justices Roman G. Del Rosario (Presiding Justice), Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban, concurring; and Associate Justice Catherine T. Manahan, dissenting.

³ *Id.* at 95-100; penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justices Roman G. Del Rosario (Presiding Justice), Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban, concurring; Associate Justice Catherine T. Manahan, maintaining her dissenting opinion; and Associate Justice Erlinda P. Uy, on leave.

The relevant facts, as gathered by the CTA *En Banc*, are as follows:

On July 15, 2009, the CIR issued to respondent a Letter of Notice (LN) No. 057-RLF-07-00-00047 informing it of the discrepancy found after comparing its tax returns for Calendar Year (CY) 2007 with the Reconciliation of Listings for Enforcement and Third-Party Matching under the Tax Reconciliation System. The LN was received and signed by a certain Malou Bohol on July 24, 2009.⁴

Subsequently, the Bureau of Internal Revenue (BIR), through LN Task Force Head Sarina B. Marinduque, issued a follow-up letter dated August 24, 2009. The letter was received and signed by a certain Amado Ramos.⁵

Due to the inaction of respondent, the CIR issued to it, on January 12, 2010, the following: (1) Letter of Authority (LOA) No. 2008 00044533 for the examination of its book of accounts; and other accounting records and (2) a Notice of Informal Conference (NIC).⁶

On March 29, 2010, the CIR issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies that found respondent liable for deficiency income tax (IT) and value-added tax (VAT) in the total amount of ₱6,485,579.49.⁷

On July 20, 2010, the CIR issued a Final Assessment Notice (FAN), assessing respondent with deficiency VAT in the amount of ₱3,720,488.73 and deficiency IT in the amount of ₱5,305,486.50.⁸

On November 28, 2012, the Revenue District Officer (RDO) issued a Preliminary Collection Letter requesting respondent to pay the assessed tax liability within 10 days from notice.⁹

⁴ *Id.* at 65.

⁵ *Id.*

⁶ *Id.* at 66.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

On January 23, 2013, the RDO issued a Final Notice Before Seizure (FNBS) giving respondent the last opportunity to settle its tax liability within 10 days from notice.¹⁰

On March 20, 2013, respondent sent a letter to the RDO and the collection officers stating that: (1) it is not aware of any pending liability for CY 2007; (2) that Mr. B. Benitez, who signed and received the preliminary notices, was a disgruntled rank-and-file employee not authorized to receive the notices; and (3) Mr. B. Benitez did not forward the notices to it. Respondent also requested a grace period of one month to review its documents.¹¹

In a letter dated April 2, 2013, the RDO denied the requested one-month grace period.¹²

On April 19, 2013, respondent protested the FNBS. It claimed that it is not liable for any deficiency IT for CY 2007; that being a common carrier, it is exempt from the payment of VAT; that the service of the NIC was invalid; and that it did not receive the PAN and FAN prior to the issuance of the FNBS.¹³

On April 23, 2013, respondent was constructively served with a Warrant of Distraint and/or Levy (WDL) No. 057-03-13-074-R.¹⁴

Aggrieved, on May 2, 2013, respondent filed a Petition for Review (With Prayer for Preliminary Injunction and Issuance of a Temporary Restraining Order) with the CTA in Division.¹⁵

In the Answer dated August 22, 2013, the CIR prayed for the denial of the petition for review arguing that: (1) no error or illegality can be ascribed to his assessment for deficiency tax liability as due process was observed; (2) respondent failed to interpose a timely protest against the FAN and to submit within the prescribed period of 60 days supporting documents to refute the findings of the revenue examiners; (3) respondent is liable for deficiency IT and deficiency VAT; and (4)

¹⁰ *Id.* at 67.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

the presumption of the propriety and exactness of tax assessments is in his favor.¹⁶

Ruling of the CTA sitting in Division (CTA Division)

In the Decision dated August 30, 2016, the CTA Division granted respondent's petition for review. Accordingly, it cancelled and set aside the following: (1) the FAN dated July 20, 2010 and the attached Assessment Notices No. F-057-LNMF-07-IT-002 and F-057-LNMF-07-VT-002, respectively assessing respondent for deficiency IT of ₱5,305,486.50 and deficiency VAT of ₱3,720,488.73, or a total of ₱9,025,975.23, for CY 2007; and (2) WDL No. 057-03-13-074-12 served on April 23, 2013.

The CTA Division found that respondent was not accorded due process in the issuance of the PAN and the FAN as there was failure to prove that the notices were properly and duly served upon and received by respondent. Hence, it declared void the assessments made against respondent for deficiency IT and deficiency VAT.¹⁷

In the Resolution dated November 16, 2016, the CTA Division denied the CIR's motion for reconsideration. Hence, the CIR filed a petition for review with the CTA *En Banc*.

Ruling of the CTA En Banc

In the assailed Decision¹⁸ dated April 3, 2018, the CTA *En Banc* denied the petition for review for lack of merit. Thus, it affirmed the ruling of the CTA Division that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent. Consequently, it declared void the deficiency IT and VAT for CY 2007 assessed against respondent for failure to accord respondent due process in their issuance.¹⁹

¹⁶ *Id.* at 67-68.

¹⁷ *Id.* at 68.

¹⁸ *Id.* at 64-82.

¹⁹ *Id.* at 78.

Furthermore, even assuming that the PAN and the FAN were properly and duly served upon and received by respondent, the CTA *En Banc* ruled that the deficiency IT and VAT assessments against respondent for CY 2007 are still void for failure to demand payment of the taxes due within a specific period. It observed that the FAN and the assessment notices attached to it failed to prescribe a definite period for respondent to pay the alleged deficiency taxes.²⁰

The CIR filed a motion for reconsideration, but the CTA *En Banc* denied it in the Resolution²¹ dated July 16, 2018.

Hence, the present petition raising the following grounds:

WHILE MAINTAINING THAT THE CTA HAS NO JURISDICTION OVER THE ORIGINAL PETITION SINCE THE DEFICIENCY TAX ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE, THE CTA ERRED IN DECLARING THE ASSESSMENTS VOID FOR THE ALLEGED FAILURE ON THE PART OF PETITIONER TO PROVE SERVICE THEREOF TO RESPONDENT.

THE CTA *EN BANC* ERRED IN RULING THAT THE FINAL ASSESSMENT NOTICE ISSUED AGAINST RESPONDENT IS VOID FOR ALLEGEDLY NOT CONTAINING A DEFINITE DUE DATE FOR PAYMENT OF THE TAX LIABILITIES.²²

The Court's Ruling

The petition lacks merit.

At the outset, it bears stressing that a review of appeals filed before this Court is “not a matter of right, but of sound judicial discretion.”²³ Further, a petition under Rule 45 of the Rules of Court should raise only questions of law which must be distinctly set forth.²⁴ A question is one of law when the appellate court can determine the issue

²⁰ *Id.* at 78-79.

²¹ *Id.* at 95-100.

²² *Id.* at 33.

²³ See Section 6, Rule 45, RULES OF COURT.

²⁴ See Section 1, Rule 45, RULES OF COURT.

raised without reviewing or evaluating the evidence; otherwise, it is a question of fact.²⁵

Factual questions are not the proper subject of an appeal by *certiorari*. It is not for the Court to once again analyze or weigh evidence that has already been considered in the lower courts.²⁶

The question of whether the CIR was able to sufficiently prove that the PAN and the FAN were properly and duly served upon and received by respondent is, undeniably, a question of fact. In the case, the CTA *En Banc* ruled in the negative; hence, it sustained the CTA Division's finding that respondent was not accorded due process and declared void the assessments made against respondent for deficiency IT and VAT for CY 2007.

The Court recognizes that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the tax court.²⁷ There is no such gross error or abuse in this case.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the assessment to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Section 228 pertinently 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 pre-assessment notice shall not be required in the following cases:

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.

²⁵ *Century Iron Works, Inc., et al. v. Bañas*, 711 Phil. 576, 586 (2013), citing *Leoncio, et al. v. Vera, et al.*, 569 Phil. 512, 516 (2008), further citing *Bincy v. Odeña*, 551 Phil. 681, 689 (2007).

²⁶ *Sps. Miano v. Manila Electric Company*, 800 Phil. 118, 119 (2016).

²⁷ *Commissioner of Internal Revenue v. GJM Phils. Manufacturing, Inc.*, 781 Phil. 816, 825 (2016).

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.

X X X X

(Emphasis supplied)

To highlight the due process requirement in Section 228 of the NIRC, Section 3 of Revenue Regulations (RR) 12-99²⁸ dated September 6, 1999 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:

3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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

²⁸ 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, Revenue Regulations No. 12-99.

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 x x x. 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.

x x x x

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* x x x. 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.

x x x x

As can be gleaned from the above provisions, service of the PAN or the FAN to the taxpayer may be made by registered mail. 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.²⁹

In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.

²⁹ *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, 529 Phil. 785, 793 (2006).

As ruled by the CTA *En Banc*, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.³⁰

In the present petition, the CIR contends that he had presented competent proof of actual mailing and receipt of the assessment notices. He, likewise, insists that Galicia was incompetent to testify as to the authentication of the signatures of respondent appearing on the subject registry return receipts. He avers that Galicia had neither control on the acceptance of the receipts nor connection with the taxpayer to verify the signatures appearing thereon. Thus, he maintains that Galicia's testimony, although not objected to, had no probative value that can be used as justification by the CTA *En Banc* in the assailed Decision.

Citing Section 36, Rule 130 of the Rules of Court which provides that a witness can testify only to those facts which he knows of his personal knowledge, the CIR argues that Galicia had no capacity to validate the signatures appearing on the registry return receipts. The CIR also invokes CTA Associate Justice Catherine T. Manahan's Dissenting Opinion,³¹ which referred to the testimony of Galicia from his Judicial Affidavit and concluded that petitioner was able to establish actual mailing and receipt of the assessment notices.

The Court sees no reason to set aside the findings of the CTA *En Banc*. "It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, has accordingly developed an exclusive expertise on the resolution unless there has been an abuse or improvident exercise of authority."³² Likewise, it has been the long-standing policy and practice

³⁰ *Rollo*, p. 77.

³¹ *Id.* at 83-94.

³² *CIR v. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019, citing *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018, 866

of the Court to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases.³³ In the absence of any clear and convincing proof that the findings of the CTA are not supported by substantial evidence or that there is a showing that it committed a gross error or abuse, the Court must presume that the CTA rendered a decision which is valid in every respect.³⁴

In any event, the Court finds significant the fairly recent issuance by no less than the CIR himself of Revenue Memorandum Order No. (RMO) 40-2019³⁵ dated May 30, 2019, which prescribes the procedures for the proper service of assessment notices in accordance with the provisions of Section 3.1.6 of RR 18-2013.³⁶ RMO 40-2019 pertinently provides:

12. The Chief of the Assessment Division or the Head of the Reviewing Office shall maintain a record of all assessment notices that were issued with the following details:

- 12.1 Type of Assessment Notice (PAN/FLD/FAN/FDDA);
- 12.2 Assessment Notice Number, if applicable;
- 12.3 Date of Assessment Notice;
- 12.4 Name of Taxpayer;
- 12.5 Registered Address;
- 12.6 Mode of Service;
- 12.7 Date of Service;
- 12.8 Name of Taxpayer/Person who received the assessment notice;
- 12.9 Position/designation/relationship to the taxpayer, if not personally served to the taxpayer named in the assessment notice;
- 12.10 Address/place where the assessment notice was served/delivered in case the assessment notice was served in a place other than his registered address; and
- 12.11 Status – Indicate whether the deficiency tax assessment is
 - a. Paid;
 - b. Unprotested; or
 - c. Disputed.

SCRA 104, 113.

³³ *Commissioner of Internal Revenue v. GJM Phils. Manufacturing, Inc.*, *supra* note 27 at 825, citing *Commissioner of Internal Revenue v. MERALCO*, 735 Phil. 547, 561 (2014).

³⁴ *Commissioner of Internal Revenue v. Team [Phils.] Operations Corp.*, 731 Phil. 141, 152-153 (2014). Citations omitted.

³⁵ Entitled "Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013," issued and took effect on May 30, 2019.

³⁶ Entitled "Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment," issued on November 28, 2013, and published in the Manila Bulletin on November 30, 2013 and The Philippine Star on December 3, 2013.

As can be gleaned above, a detailed record of all assessment notices issued by the CIR is required. Notably, among the details to be recorded by the Chief of the Assessment Division or the Head of the Reviewing Office are the “[n]ame of [t]axpayer/[p]erson who received the assessment notice” and, more importantly, the “[p]osition/designation/relationship to the taxpayer, if not served to the taxpayer named in the assessment notice.”

While RMO 40-2019 was not yet in force at the time the questioned PAN and FAN in the case were issued, the fact of such subsequent issuance of RMO 40-2019 by the CIR gives the Court all the more reason to affirm, if only for consistency and uniformity, the CTA *En Banc*'s finding that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent. Here, the CIR failed to identify and authenticate the signatures appearing on Registry Receipt Nos. 5187 and 2581 for the purpose of ascertaining whether such signatures were those of respondent's authorized representative/s. Hence, it is readily apparent that the CIR could not have complied with the requirement of noting the position/designation/relationship of Mr. B. Benitez, the recipient, to respondent, the taxpayer.

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 respondent due process in their issuance, the CIR's argument necessarily fails.

Besides, even granting that the PAN and the FAN were properly and duly served upon and received by respondent, the Court affirms the CTA *En Banc*'s ruling that the FAN and the assessment notices attached to it are still void for failure to demand payment of the taxes due within a specific period.

As held in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*:³⁷

³⁷ 799 Phil 391 (2016).

A final assessment is a notice “to the effect that the amount therein stated is due as tax and a demand for payment thereof.” This demand for payment signals the time “when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]” Thus, it must be “sent to and received by the taxpayer, and *must demand payment of the taxes described therein within a specific period.*” (Italics supplied.)

In this case, the CTA *En Banc* observed that the last paragraph of the FAN indicates that the CIR would still issue a formal letter of demand and assessment notice should respondent fail to respond to the FAN within the 15-day period given to it to present in writing its side of the case. However, the CTA *En Banc* found nothing in the record that reveals that the CIR had issued a final demand containing a specific or definite period of payment following the expiration of the 15-day period given to respondent to respond to the FAN. Further, the CTA *En Banc* observed that the assessment notices attached to the FAN also did not prescribe a definite period for respondent to pay the alleged deficiency taxes.


Again, the matter of whether the subject assessments contained a definite period within which to pay the assessed taxes is a question of fact which this Court will not entertain in the present appeal under Rule 45. There being no showing of gross error or abuse on the part of the CTA *En Banc* in its findings of fact, the Court accords respect to the latter’s finding that the FAN dated July 20, 2010 and the assessment notices attached to it did not contain a definite period within which to pay the assessed taxes. As such, even assuming that the assessments were duly served on and received by respondent, they are still void and without any legal consequence.

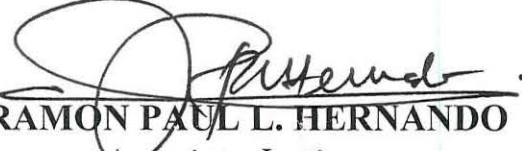
WHEREFORE, the petition for review on *certiorari* is **DENIED**. The assailed Decision dated April 3, 2018 and the Resolution dated July 16, 2018 issued by the Court of Tax Appeals *En Banc* in CTA EB No. 1565 (CTA Case No. 8650) are **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING,
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

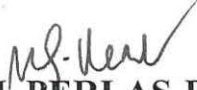

RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

(On official leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

ATTESTATION

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


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice