REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1147** (CTA Case No. 8108)
	Present:
-*versus*-	***Del Rosario, P.J.*** ***Castañeda, Jr.,*** ***Bautista,*** ***Uy,*** ***Casanova,*** ***Fabon-Victorino,*** ***Mindaro-Grulla,*** ***Cotangco-Manalastas,*** *and* ***Ringpis-Liban, JJ.***
MINDANAO SANITARIUM AND HOSPITAL, INC., *Respondent.*	Promulgated: MAR 15 2016 10:02 a.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioner's "Motion for Reconsideration Re: Decision dated October 5, 2015" ("Motion") filed by registered mail on November 12, 2015; with respondent's "Comment (On Petitioner's [']Motion for Reconsideration Re: Decision dated October 5, 2015['])" ("Comment") filed on February 9, 2016.

On October 5, 2015, the Court *En Banc* promulgated the assailed Decision, disposing of the case as follows:

> **WHEREFORE,** the assailed Decision promulgated on December 16, 2013 and the Resolution dated March 13, 2014 are hereby **AFFIRMED**.

On one hand, petitioner requests the Court to reconsider the assailed Decision. She alleges that even under the assumption that the assessment notices were not mailed to respondent, the Court erred in ruling that the alleged tax liabilities lack legal and factual bases since the Formal Letter of Demand ("FLD") did not make a clear and categorical demand for payment; that the sole issue in the case is whether the assessment notices were mailed together with the FLD; that the evidence of both parties contemporaneous and immediate to the event in question show that the assessments were enclosed with the FLD; and that respondent is liable for income tax.

Petitioner clarified that the reason for the discrepancies between the FLD, as mailed by petitioner and as received by respondent, is due to the documents being printed in three (3) copies, one for the taxpayer, another as receiving copy and an extra copy for the docket. *Exhibit* "8," being the receiving copy, will bear the stamp "Admin Mailing Section," while *Exhibit* "E," as the one mailed will contain the receiving date.

Moreover, petitioner claims that she presented sufficient testimonial evidence to show that the assessments were sent to and received by respondent; that the FLD itself provides that the assessments were indeed enclosed therewith; that petitioner confirmed that the assessments were enclosed with the FLD in its protest thereto; that respondent, due to its lengthy protest, could not have based its protest on the one (1)-pager FLD; that respondent should have pointed out its non-receipt of the assessment in its request for reinvestigation; that respondent will not execute a waiver of the defense of prescription if it has not yet received the assessment; and that respondent's testimonial evidence contradicts its documentary evidence and lack corroboration.

Respondent, on the other hand and among others, counters that the contents of the FLD, and not mere caption thereof, governs; that the FLD merely requests payment of the tax but there was no actual demand to pay within a fixed deadline indicated therein; that petitioner's explanations on the nature and flow of documents within the bureau's office are unsubstantiated; that evidence belie petitioner's claim regarding the receipt of the assessment notice; that witnesses for petitioner never testified to being personally present when the assessment notice was physically mailed and when respondent received the same; that petitioner failed to present a registry receipt nor a certification from the post office to bolster its claim; that respondent's denial of the receipt of the assessment shifts the burden of proof to petitioner, that a copy of the assessment was indeed sent; that failure to prove receipt leads to the conclusion that no assessment was issued; that from the outset, respondent made it clear that it received only the FLD and its annexes *sans* the assessment notice; that its exhaustive protest was based on the FLD and its annexes; and that there is nothing in *Section 228 of the 1997 NIRC* or in *Revenue Regulations No. 12-99* which mandates the filing of a protest once a Tax Verification Notice is received by taxpayer, let alone respondent, hence there is no legal basis for petitioner to highlight this matter.

Based on the foregoing, the Court *En Banc* does not find any reversible error in ruling that only the FLD, without the assessment notices, was actually received by respondent.

On petitioner's assertion that the FLD itself shows that the Final Assessment Notice ("FAN") was indeed enclosed therewith, it must be stressed that the fact that the FLD provides that the assessment notice is appended thereto does not lead to the conclusion that it is actually true. The Court *En Banc* cannot consider this as gospel truth, especially if the enclosure or non-enclosure thereof is the very issue in the case.

As to petitioner's claim that respondent's lengthy protest contradicts its allegations that it only received a one (1)-pager FLD and that it did not receive the FAN, the Court *En Banc* notes that while the assessment was not enclosed with the FLD, there are other attachments thereto, which enabled respondent to prepare its protest. Looking into the FLD, its *Annexes* "A" and "B,"[1] and the letter protest, it appears that the latter is based on the former documents and not the FAN. Moreover, the fact that respondent referred to the FLD and its annexes as "assessment"[2] does not lead to the conclusion that the FAN itself was actually received.

There is nothing in the rules which bars respondent from raising the issue of due process even after protest. The Supreme Court consistently held that if the taxpayer denies receiving the

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[1] *Records, CTA Case No. 8108*, pp. 251-261.
[2] *Ibid.*, pp. 262-267.

assessment from the BIR, it is incumbent upon the latter to prove, by competent evidence, such receipt by the addressee.[3] The *onus probandi* will be shifted to the BIR to prove, by contrary evidence, that the taxpayer received the assessment in the due course of mail.[4]

In this case, respondent directly denies having received the FAN through the following evidence:

1. Letter request for a copy of the FAN dated April 27, 2010;[5] and

2. Testimony of witnesses, namely: Atty. Francisco I. Naputo[6], Mr. Crispulo T. Aguillon, Jr.[7], and Joaquin S. Samaco[8].

Hence, the burden to prove receipt thereof is shifted to petitioner. To overthrow this burden, petitioner presented the following:

1. FLD and FANs, all with a receiving stamp of the Admin, Mailing Section[9] received on October 15, 2009;

2. Memorandum[10] dated December 11, 2009 from Regional Director Tabule to the Revenue District Officer of Revenue District No. 101, informing the latter that the PAN and FLD were sent to the taxpayer; and

3. Testimony of witness Jonainah G. Usman[11].

Taking into consideration the above documentary evidence for petitioner, the Court *En Banc* still finds that she failed to overcome the burden of proving that the FAN was indeed received by respondent.

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[3] *Barcelon Roxas Securities, Inc., v. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006, 498 SCRA 126.
[4] *Ibid.*
[5] *Records,* p. 270.
[6] *Id.,* pp. 281-282.
[7] *Id.,* pp. 283-286.
[8] *Id.,* pp. 306-307.
[9] *BIR Records,* pp. 799-802, 813.
[10] *Id.,* p. 822.
[11] *Records,* pp. 361-362.

As to petitioner's allegation that the Court *En Banc* erred in ruling that the FLD did not satisfy the second element of a valid assessment *i.e.* a demand for payment within the time prescribed, it must be noted that the Court *En Banc* discussed this matter at length in the assailed Decision, for reference:

> Consequently, we look into the documents actually received by respondent (FLD and the Annexes) to determine whether there is still a valid assessment, despite non-receipt by the respondent of the FAN.
>
> The relevant provision is *Paragraph 2 of Section 228 of the 1997 NIRC*, which states that "taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." This was implemented by *Section 3.1.4 of Revenue Regulations No. 12-99*, which provides as follows:
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>> 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. xxx
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> A valid assessment contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. The ultimate purpose thereof is to ascertain the amount that the taxpayer has to pay. It signals the time when penalties and interests begin to accrue against the taxpayer, and enables the taxpayer to determine his remedies thereon.
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> From the foregoing, it can be gathered that the elements of a valid assessment are: *(1)* a computation of tax liabilities; *(2)* a demand for payment within the prescribed period; and *(3)* a statement of the legal and factual basis/bases used.
>
> xxx xxx xxx
>
> The subject FLD did not make a clear and categorical demand for payment of the alleged tax liabilities for it contains merely a request for payment. Also, the date "10/16/09" cannot be considered a deadline for payment of

the alleged tax liabilities as the FLD itself refers to the enclosed assessment notice for the due date. It merely states that the amount of interest indicated therein runs only up to October 16, 2009 and payment beyond the said date will require an adjustment of the interest and, consequently, the total amount due.

Based on the records, the Court *En Banc* finds that there is no valid assessment for failure to issue the required FAN to the taxpayer. The use of the word "shall" under *Paragraph 2 of Section 228 of the 1997 NIRC*, as implemented by *Section 3.1.4 of Revenue Regulations No. 12-99*, underscores a mandatory, imperative and compulsory character; it is a word of command. Due process requires service and receipt thereof by the taxpayer.

After a careful study of petitioner's allegation of errors and her other arguments, the Court finds no merit in the instant Motion for failure to raise any new allegation that would merit reconsideration of the said Decision and for merely reiterating the assertions in her Memorandum.

WHEREFORE, petitioner's "Motion for Reconsideration Re: Decision dated October 5, 2015" is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice