REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2186** (CTA Case No. 9880)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.,*** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
BARRIO FIESTA MANUFACTURING CORPORATION, Respondent.	Promulgated: JUN 21 2021 4:10pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). The

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[1] Filed on 12 December 2019, *Rollo*, pp. 4-11.

[2] **SEC. 3.** *Who may appeal; period to file petition.* – …

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

…

petition seeks the reversal of the Decision dated 18 September 2019[3] (**assailed Decision**) and Resolution dated 05 November 2019[4] (**assailed Resolution**) promulgated by the Court's First Division in CTA Case No. 9880 entitled *Barrio Fiesta Manufacturing Corporation v. Commissioner of Internal Revenue.*

The antecedent facts follow.

On 27 May 2016, petitioner issued Letter of Authority (**LOA**) No. LOA-024-2016-00000160[5] authorizing examination of respondent Barrio Fiesta Manufacturing Corporation's (**respondent's/BFMC's**) records for all internal revenue taxes covering the period of 01 January 2014 to 31 December 2014.

Subsequently, on 02 July 2018, respondent received Warrant of Distraint and/or Levy (**WDL**) No. RR5-2AMS-DA-06-21-18-1258(024)[6] citing respondent's refusal to pay delinquency taxes amounting to ₱53,288,223.35.

On 23 July 2018, respondent filed its Petition for Review (with Urgent Motion to Suspend the Collection of Tax)[7] [**Motion to Suspend**] before this Court. The case was raffled to the First Division.

Later or on 08 August 2018, summons[8] was issued against petitioner through the Office of the Solicitor General (**OSG**), giving petitioner fifteen (15) days from receipt thereof within which to file his Answer.

In a separate Resolution dated 08 August 2018[9], the First Division ordered petitioner to file his Comment/Opposition to respondent's Motion to Suspend within five (5) days from his receipt thereof.

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3 Penned by Presiding Justice Roman G. Del Rosario with Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Catherine T. Manahan, concurring. Division Docket, pp. 682-697.
4 Id., pp. 712-713.
5 Exhibit "P-4", id., p. 293.
6 Exhibit "P-3", id., p. 292.
7 Id., pp. 12-34.
8 Id., pp. 47-48.
9 Id., p. 50.

Thereafter, on 15 August 2018, respondent filed an Urgent Motion to Lift Garnishment and Dispense with the Payment of the Bond[10] (**Motion to Lift**). Accordingly, petitioner was ordered to file his Comment/Opposition thereon within five (5) days from receipt of the Court's Resolution dated 17 August 2018.[11] As *per* Records Verification dated 03 September 2018[12], petitioner failed to file his Comment/Opposition to respondent's Motion to Suspend.

During the hearing of respondent's Motion to Suspend on 06 September 2018[13], respondent proceeded to present its lone witness, Crosaldo M. Suni (**Suni**), who essentially testified to BFMC's non-receipt of the Preliminary Assessment Notice (**PAN**) and Final Assessment Notice (**FAN**).[14]

On 17 September 2018, respondent filed its Formal Offer of Evidence[15] (**FOE**). On even date, petitioner filed an Urgent Motion to File/Admit Verified Answer with Leave of Court and to Suspend Proceedings[16] (**Motion to Admit**) praying for additional thirty (30) days within which to file his Answer.

As *per* Records Verification dated 19 October 2018[17], petitioner failed to file his Comment/Opposition to respondent's FOE and Motion to Lift within the time allotted by the Court.

In a Resolution dated 12 November 2018[18], the Court ordered respondent to file its Comment/Opposition to petitioner's Motion to Admit within ten (10) days from its receipt thereof.

On 28 November 2018, respondent filed its Comment/Opposition with Motion to Declare Respondent in Default (to CIR's Motion to Admit).[19]

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10 Id., pp. 51-60.
11 Id., p. 111.
12 Id., p. 242.
13 See Order dated 06 September 2018, id., pp. 262-263.
14 See Judicial Affidavit, Exhibit "P-70", id., pp. 477-191. TSN dated 22 January 2019.
15 Id., pp. 272-282.
16 Id., pp. 433-436.
17 Id., p. 439.
18 Id., pp. 444-445.
19 Id., pp. 446-453.

In a Resolution dated 13 December 2018[20], the First Division denied petitioner's Motion to Admit and declared the latter in default. Consequently, the case was set for respondent's presentation of evidence *ex parte*.[21]

In a Resolution dated 18 December 2018[22], the First Division resolved to: (1) admit respondent's exhibits except Exhibits "P-1", "P-10" and "P-19"[23]; (2) grant respondent's Motion to Suspend and Motion to Lift; (3) lift the warrants of garnishment on certain bank accounts of respondent; (4) dispense with the payment of a bond; and, (5) suspend the collection of taxes.

Thereafter, trial ensued where respondent again presented Suni, who reiterated his previous testimony regarding respondent's failure to receive the PAN and the FAN.[24]

On 18 February 2019, respondent filed its FOE[25] which the First Division resolved to admit (except Exhibits "P-10" and "P-19").[26]

Thereafter, respondent filed its Memorandum[27] on 28 March 2019. In a Resolution dated 10 April 2019[28], the First Division submitted the case for decision.

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20 Id., pp. 454-458.
21 Id., p. 458.
22 Id., pp. 463-471.
23

Title	Description
"P-1"	Petitioner's Certificate of Filing Amended Articles of Incorporation issued by the Securities and Exchange Commission (SEC) dated October 4, 2016 bearing SEC Registration No. 146893.
"P-10"	Warrant of Garnishment dated July 11, 2018 issued to and received by ChinaBank Savings on August 2, 2018.
"P-19"	Warrant of Garnishment dated July 11, 2018 issued to and received by Security Bank on August 8, 2018.

24 See Order dated 22 January 2019, id., pp. 571-572.
25 Id., pp. 585-596.
26 See Resolution dated on 04 March 2019, Id., pp. 658-659.
27 Id., pp. 660-677.
28 Id., p. 679.

On 18 September 2019, the First Division rendered the assailed Decision[29] granting respondent's petition for petitioner's failure to prove actual receipt of the PAN and the FAN. The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy No. RR5-2AMS-DA-06-21-18-1258(024) dated June 21, 2018 and the assessment upon which it is based are **DECLARED VOID, CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**
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> ...

Aggrieved, petitioner filed his Motion for Reconsideration (**MR**) on 09 October 2019[30] which was denied.[31] In the similarly assailed Resolution dated 05 November 2019, the First Division declared the lack of a notice of hearing in the MR as a fatal defect.[32]

On 12 December 2019, petitioner filed the present petition before the Court *En Banc*. Accordingly, the Court ordered respondent to file its comment thereto in a Resolution dated 19 February 2020.[33]

On 11 March 2020, respondent filed its Comment/Opposition.[34] On 29 September 2020, the case was submitted for decision.[35]

Petitioner raises this principal issue in his petition before Us —

> WHETHER THE FIRST DIVISION ERRED IN GRANTING RESPONDENT BARRIO FIESTA MANUFACTURING CORPORATION'S PETITION FOR REVIEW (WITH URGENT MOTION TO SUSPEND THE COLLECTION OF TAX) ON THE GROUND THAT PETITIONER COMMISSIONER OF INTERNAL

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29 Supra at note 3.
30 Division Docket, pp. 705-709.
31 See Resolution dated 05 November 2019, supra at note 4.
32 Division Docket, p. 712.
33 *Rollo*, pp. 61-62.
34 Id., pp. 63-74.
35 See Resolution, id., pp. 80-81.

REVENUE FAILED TO PROVE THE ISSUANCE AND RECEIPT OF THE PRELIMINARY ASSESSMENT NOTICE (PAN) AND THE FINAL ASSESSMENT NOTICE (FAN).

In his bid to overturn the assailed 18 September 2019 Decision and the subsequent 05 November 2019 Resolution, petitioner insists on the following lapses on the part of the First Division: (1) the WDL is indicative of the PAN and the FAN's issuance as the same is only issued after the taxpayer's failure to protest the FAN; (2) his delay in filing an Answer was the result of an impeded work flow within his own office and that the filing of the Motion to Admit is proof of his intention to participate in the proceedings before the Court in Division; and, (3) the delay resulting from the negligence of government agents does not estop the government from collecting the taxes due it. In his assertions, petitioner relies on the Supreme Court's decision in *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*[36] (**Visayas**) from which he cites:

> ...
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> It is a well-settled rule that the government cannot be estopped by the mistakes, errors or omissions of its agents. It has been specifically held that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents. Upon taxation depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people.
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> ...

Expectedly, respondent fully agrees with the First Division's finding that the assessment against it was invalid for petitioner's failure to prove respondent's receipt of the PAN and the FAN.

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[36] G.R. No. 197525, 04 June 2014; Citations omitted.

The Court *En Banc*'s ruling follows below.

After a careful scrutiny of the records of the case and the arguments put forward by both parties, the Court *En Banc* finds no cogent reason to set aside the First Division's assailed Decision and Resolution.

Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, 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: ...
> ...
>
> **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.[37]
> ...

We echo the First Division's sentiment that although respondent's blanket denial of the PAN and the FAN's receipt may not be well-taken; the denial, nevertheless, behooves petitioner to prove respondent's actual receipt of the same. In *Republic of the Philippines v. The Court of Appeals, et al.*[38] (**Republic**), the Supreme Court explains thusly:

> ...
> ...[W]hile the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still, this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee...
> ...

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[37] Emphasis supplied.
[38] G.R. No. L-38540, 30 April 1987.

To give rise to the foregoing presumption of receipt, the Supreme Court in *Gonzalo P. Nava v. Commissioner of Internal Revenue*[39] *(***Nava***)* held that there must first be satisfaction of the following requirements:

> ...
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> The facts to be proved to raise this presumption are (a) that the letter was *properly addressed* with postage prepaid, and (b) that it was *mailed*. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie." (VI, Moran, Comments on the Rules of Court, 1963 ed., 56-57; citing Enriquez vs. Sun Life Assurance of Canada, 41 Phil. 269)
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> ...

Recent jurisprudence remains faithful to the foregoing principles such as in the much later case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc. v. Commissioner of Internal Revenue*[40] (**Barcelon**) where the FAN's receipt was also denied by the taxpayer.

As culled from the case records, petitioner was held in default for failing to file his Answer within the time prescribed by the Court. As a result, he was unable to submit proof to negate respondent's denial of the subject notices' receipt. Following the doctrines laid down in *Republic* and *Nava*, it becomes clear that petitioner failed to discharge his burden of proof.

In petitioner's defense, he contends that the WDL's issuance is evidence in itself of the previous issuance of the subject notices. Similar to the presumption that a letter is received in the ordinary course of mail, regularity in the exercise of petitioner's functions is likewise a mere disputable presumption. Respondent, in denying receipt of the subject notices, also puts this presumption up for debate.

At this point, it must be emphasized that the issuance of the subject notices and respondent's receipt thereof are two (2) different matters. The PAN and FAN's issuance is not in question in the present

39 G.R. No. L-19470, 30 January 1965; Italics in the original text.
40 G. R. No. 157064, 07 August 2006.

case but only the actual receipt thereof by the taxpayer. Even assuming *arguendo* that the notices were indeed issued, it does not prove the fact of their receipt by the intended addressee.

In the landmark case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[41] (**Fitness by Design**), the Supreme Court held that the CIR must ensure not only the FAN's sending but also its receipt by the taxpayer, to wit:

> ...
> 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."**
> ...

Furthermore, in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*[42] (**GJM**), the Supreme Court accentuated the necessity for the CIR to prove the assessment's receipt by the taxpayer through the following modes:

> ...
> 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 which would have been signed by the taxpayer or its authorized representative. 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, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting

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41 G.R. No. 215957, 09 November 2016; Citations omitted and emphasis supplied.
42 G.R. No. 202695, 29 February 2016; Citation omitted.

> evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.
>
> ...

Going back to the facts of this case, petitioner failed to provide any scintilla of proof that respondent received the subject notices. As pointed out by the First Division, petitioner did not even bother to seek a reconsideration of the First Division's resolution that declared him in default. In his defense, petitioner blames the delay on the sluggish turn-over of records within his own office. However, the efficiency of the Bureau of Internal Revenue's (**BIR's**) workflow is not a valid reason for the delay nor a matter fit for the judicial discourse.

At any rate, even after the promulgation of the assailed Decision, petitioner did not seek a reopening of the case to submit the evidence required of him. He did not even claim to be in possession of any proof of respondent's receipt of the subject notices. Petitioner's MR of the assailed Decision, much like the present petition, banks heavily on the mere insistence that the doctrine of estoppel does not run against the government.

In arguing his case, petitioner appears to have taken an overbroad interpretation of the doctrine laid down in *Visayas* – one completely devoid of any context.

In *Visayas*, this Court's jurisdiction was put in issue by the CIR. There, the Supreme Court held that the CIR's active participation in a case before the CTA does not estop the same from questioning the Court's jurisdiction over the case. Clearly, the concept of estoppel in *Visayas* was applied in relation to the Court's jurisdiction over therein taxpayer's claim for refund.

The implication of stretching the doctrine in *Visayas* beyond its intended application would render the need for due process null. Adherence to due process requirements in tax assessments remains a necessity, the observance of which is determinative of the assessment's validity. This is evident in the principles established in *Republic, Nava, Fitness by Design* and *GJM* which at present remain good law.

Unlike in *Visayas*, no question regarding the Court's authority to try the present case has been raised in these proceedings. In fact, the timeliness of respondent's appeal to the Court in Division is undisputed.

WHEREFORE, with the foregoing premises, the Petition for Review filed by petitioner Commissioner of Internal Revenue on 12 December 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 18 September 2019 and 05 November 2019, respectively, of the First Division in CTA Case No. 9880, entitled *Barrio Fiesta Manufacturing Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
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

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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