REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

UNISPHERE INTERNATIONAL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8782

Members:
FABON-VICTORINO, *Acting Chairperson, and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 2 1 2019 3:22 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

This resolves the Petition for Review filed by Unisphere International, Inc., praying for the Court to quash the Warrant of Distraint and/or Levy and the Warrants of Garnishment issued pursuant to Assessment No. 34-1-000219-94 dated March 5, 1998; to cancel the Notice of Tax Lien on TCT No. PT-100571; and to cancel and withdraw the assessment and collection of alleged deficiency income tax and expanded withholding tax (EWT) for calendar year (CY) 1994, including interest, surcharge and penalties, in the total amount of ₱6,127,243.07.

THE FACTS

Petitioner Unisphere International, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at No. 213 C. Santos Street, Bo. Ugong, Pasig City.[1]

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[1] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. II, p. 692.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent issued a Warrant of Distraint and/or Levy (WDL) against petitioner's properties to collect petitioner's alleged delinquent tax liabilities for CY 1994 in the original amount of ₱1,747,817.12.[2]

On October 21, 2003, Atty. Phydias Emmanuel R. Ramos, acting on behalf of petitioner, filed a letter with respondent and the BIR Collection and Enforcement Division (CED) explaining that the BIR cannot commence collection proceedings because no valid assessment has been issued against petitioner. Hence, Atty. Ramos requested respondent to lift the WDL.[3]

On January 29, 2004, Ms. Teresita M. Angeles, the Chief of the CED, replied to Atty. Ramos' letter stating that an Assessment Notice had been issued under Assessment No. 34-1-000219-94 on March 5, 1998 following the proper tax audit and assessment procedure.[4]

On March 9, 2004, Atty. Ramos filed a letter requesting Ms. Angeles to furnish him copies of all documents pertained to in the Assessment Notice that was mentioned in the CED's letter dated January 29, 2004 because petitioner never received any document from the BIR in connection with the audit of its tax liabilities for CY 1994.[5]

On March 12, 2004, Ms. Angeles of the CED sent a letter explaining that the deficiency tax assessment was issued based on the "best evidence obtainable rule" because petitioner allegedly failed to present the required books of account.[6]

On April 6, 2004, Atty. Ramos wrote to Ms. Angeles to advise her that the letter dated March 12, 2004 did not have any attachments. Hence, he requested that the documents mentioned in the said letter be forwarded to his law office.[7]

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[2] Par. 3, Stipulated Facts, JSFI, docket, vol. II, p. 693.
[3] Par. 4, Stipulated Facts, JSFI, docket, vol. II, p. 693.
[4] Par. 5, Stipulated Facts, JSFI, docket, vol. II, p. 693.
[5] Par. 6, Stipulated Facts, JSFI, docket, vol. II, p. 693.
[6] Par. 7, Stipulated Facts, JSFI, docket, vol. II, p. 693.
[7] Par. 8, Stipulated Facts, JSFI, docket, vol. II, p. 693.

On April 28, 2004, Atty. Ramos wrote another letter to Ms. Angeles to reiterate that petitioner did not receive any Letter of Authority (LOA) authorizing specified Revenue Examiners to audit petitioner's books for CY 1994.[8]

The BIR did not respond to Atty. Ramos' letters dated April 6, 2004 and April 28, 2004.[9]

On January 27, 2006 and April 5, 2006, the BIR caused the annotation of two (2) Notices of Tax Lien on the title of petitioner's property located in Pasig City covered by TCT No. PT-100571.[10]

On June 14, 2006, Mr. Carlos Ty, petitioner's president, sent a letter to former BIR Commissioner Jose Mario C. Buñag to reiterate that petitioner had not been served any LOA for CY 1994.[11]

On May 9, 2007, Mr. Edgardo S. Santos, the Revenue District Officer of RDO No. 34, issued a letter to petitioner denying its request to review the CED's decision to issue the WDL and the Notice of Tax Lien.[12]

On August 27, 2008, petitioner filed an application to compromise its alleged deficiency tax liabilities for CY 1994 on the ground of doubtful validity of the assessment[13], and paid the minimum compromise rate of ten percent (10%) of the basic tax, as per Section 204 of the Tax Code of 1977, as amended, detailed as follows:[14]

	BASIC TAX ASSESSED	**MINIMUM COMPROMISE RATE**	**COMPROMISE PAYMENT**
Income Tax	₱880,910.95	₱88,091.10	₱88,091.10
EWT	2,240.50	224.05	2,240.50
Total	₱883,151.45	₱88,315.15	₱90,331.60

On February 25, 2009, petitioner paid an additional compromise payment of ₱264,273.28, thereby raising the total compromise payments to ₱354,604.88, or more than forty percent (40%) of the basic tax assessed for CY 1994.[15]

[8] Par. 9, Stipulated Facts, JSFI, docket, vol. II, p. 693.
[9] Par. 10, Stipulated Facts, JSFI, docket, vol. II, p. 693.
[10] Par. 11, Stipulated Facts, JSFI, docket, vol. II, p. 694.
[11] Par. 12, Stipulated Facts, JSFI, docket, vol. II, p. 694.
[12] Par. 13, Stipulated Facts, JSFI, docket, vol. II, p. 694.
[13] The ground as mentioned in the Notice of Denial of the application for compromise settlement dated March 11, 2011, Exhibit "P-17", docket, vol. II, pp. 646-647.
[14] Par. 14, Stipulated Facts, JSFI, docket, vol. II, p. 694.
[15] Par. 15, Stipulated Facts, JSFI, docket, vol. II, p. 694.

On March 11, 2011, Ms. Elvira R. Vera, the Assistant Commissioner for Collection Service, issued a letter denying petitioner's application/offer for compromise settlement.[16]

On June 8, 2011, petitioner, through its new counsel Atty. Rommel V. Oliva, wrote to Ms. Vera requesting that the tax lien on its property covered by TCT No. PT-100571 be lifted in view of the fact that the BIR lost its right to assess and collect deficiency taxes from petitioner for CY 1994.[17]

On June 22, 2011, Mr. Enrique C. Pinos, the Assistant Revenue District Officer of RDO No. 43-B, issued a letter addressed to Atty. Oliva stating that Atty. Oliva's letter dated June 6, 2011 filed on June 9, 2011 has been endorsed to the Chief of the Legal Division of Revenue Region (RR) No. 7.[18]

On April 20, 2012, Atty. Amado Rey B. Pagarigan, the Chief of the Legal Division of RR No. 7, prepared a memorandum addressed to the Director of RR No. 7 recommending the cancellation of Assessment No. 34-1-000-219-94 dated March 5, 1998 and the lifting of the tax lien over the property covered by TCT No. PT-100571.[19]

On January 17, 2013, Atty. Angel Pasion, the head of the Appellate Division of the BIR, issued a memorandum stating that, after reviewing the arguments raised by petitioner, it is his recommendation that petitioner's request to lift the WDL and cancel the tax lien be denied.[20]

On September 9, 2013, Atty. John Paul Ganaloan, a Technical Asistant at the Office of the Deputy Commissioner for the Legal and Inspection Group, likewise reviewed the arguments interposed by petitioner and issued a memorandum recommending the denial of petitioner's request to lift the WDL and cancel the tax lien.[21]

On November 18, 2013, respondent issued Warrants of Garnishment (WOG) to ten (10) different banks seeking to enforce the collection of petitioner's alleged deficiency income tax and expanded withholding tax for CY 1994 in the amount of ₱6,127,243.07. Petitioner was served a copy of the WOG on February 6, 2014.[22]

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[16] Par. 16, Stipulated Facts, JSFI, docket, vol. II, p. 694.
[17] Par. 17, Stipulated Facts, JSFI, docket, vol. II, p. 694.
[18] Par. 18, Stipulated Facts, JSFI, docket, vol. II, p. 695.
[19] Par. 19, Stipulated Facts, JSFI, docket, vol. II, p. 695.
[20] Par. 20, Stipulated Facts, JSFI, docket, vol. II, p. 695.
[21] Par. 21, Stipulated Facts, JSFI, docket, vol. II, p. 695.
[22] Par. 22, Stipulated Facts, JSFI, docket, vol. II, p. 695.

Hence, petitioner filed the instant Petition for Review (with Urgent Motion to Suspend Collection of Taxes and to Quash/Lift Warrant of Distrant and/or Levy, Warrants of Garnishment and Notice of Tax Lien) on March 10, 2014.[23]

Respondent filed his Answer[24] to the Petition for Review on May 2, 2014, interposing the following Special and Affirmative Defenses:

> "6. Regarding the issuance of Preliminary Assessment Notice (PAN), the old law merely requires that the taxpayer must be notified of the Commissioner of Internal Revenue's findings. This was changed in 1998 to informing the taxpayer not only of the law, but also of the facts in which the assessment would be made. Under the new Tax Code, an assessment to be mailed should conform to the provisions of Section 228 of the Tax Code of 1997, which requires the CIR of informing the taxpayer of not only the law, but also of the facts on which an assessment would be made, otherwise the assessment itself would be invalid.
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> 7. In the case of Ferdinand R. Marcos II, vs. Court of Appeals, et al., the Supreme Court ruled that:
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>> 'It has been repeatedly observed, and not without merit, that the enforcement of tax laws and the collection of taxes, is of paramount importance for the sustenance of government. Taxes are the lifeblood of the government and should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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>> xxx Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is no reason why the BIR cannot continue with the collection of the said tax. Any

[23] Petition for Review, docket, vol. I, pp. 1-22.

[24] Docket, vol. I, pp. 212-214.

objection against the assessment should have been pursued following the avenue paved in Section 229 of the NIRC on protests on assessments of internal revenue taxes.'

8. The failure of the Petitioner to timely file a protest within 30 days from receipt of the assessment notices as provided under Section 228 of the NIRC, as amended, bars any right to contest the correctness of the herein assessment; Thus, the herein assessment became final, incontestable and demandable. And because of this, the period to appeal to the Court of Tax Appeals (CTA) had already prescribed and hence, the Honorable Court has no jurisdiction over the same."

The Court initially scheduled the pre-trial conference on June 19, 2014.[25]

On June 3, 2014, the Court issued a Resolution granting petitioner's Motion to Suspend Collection of Taxes and to Quash/Lift Warrant of Distrant and/or Levy, Warrants of Garnishment and Notice of Tax Lien, subject to the posting of a bond.[26]

Upon posting of the required bond, the Court approved the same and enjoined respondent from collecting or attempting to collect on the basis of the subject Assessment Notices until further orders from the Court.[27]

Petitioner later filed by registered mail a Supplemental Petition for Review[28] on November 28, 2014, to which respondent filed an Answer[29] on February 2, 2015.

Respondent raised the following Special and Affirmative Defenses in his Answer to the Supplemental Petition for Review:

"6. Respondent's right to collect the deficiency income tax and EWT for calendar year 1994 in the amount of PhP6,127,243.07 has not prescribed, contrary to petitioner's position;

7. Section 223 of Republic Act 8424, as amended, states that:

xxx xxx xxx

[25] Notice of Pre-Trial Conference dated May 7, 2014, docket, vol. I, p. 219.
[26] Docket, vol. I, pp. 221-225.
[27] Resolution dated August 28, 2014, docket, vol. I, pp. 369-370.
[28] Docket, vol. I, pp. 457-474.
[29] Docket, vol. I, pp. 494-498.

8. Petitioner intentionally omitted to state that it changed its address from 1885 President Quirino Ave., Paco, Manila, to 213 C. Santos St., Brgy. Ugong, Pasig, Manila, without sufficiently informing the BIR of the new address.

9. Section 11 of Revenue Regulations No. 12-85 dated 27 November 1985 requires that when a taxpayer transfers to another location, a written notice of said change of address shall be filed in the manner prescribed therein, to wit:

xxx xxx xxx

10. The Final Assessment Notice No. 34-1-000219-94 dated 05 March 1998 was duly mailed on the same date covered by Registry Receipt 53477 at the given address of petitioner as per its Income Tax Return;

11. Clearly therefore, the right of the respondent to collect had not prescribed because the period during which the petitioner's whereabouts was unknown suspended the running of the period of limitations;

PARTIAL PAYMENT AS ESTOPPEL

12. On 08 January 2008, petitioner paid ten percent (10%) of the basic deficiency income tax in the amount of PhP88,091.10 and one hundred percent (100%) of the deficiency withholding tax in the amount of PhP2,240.50 for taxable year 1994;

13. On 29 January 2009, petitioner paid the additional amount of PhP264,273.28 for the deficiency income tax for taxable year 1994, making a total payment of PhP352,364.38 comprising forty percent (40%) of the basic deficiency income tax due from petitioner;

14. Petitioner made the payments in its offers of compromise with the BIR for its tax deficiencies for taxable year 1994;

15. Petitioner, in making the partial payments on 08 January 2008 and 29 January 2009 for its 1994 tax deficiencies is estopped to claim that respondent's right to collect has prescribed.

16. The Supreme Court, in the case of RCBC vs. CIR, G.R. No. 170257, 07 September 2011, held that:

xxx xxx xxx

17. Petitioner's theory that respondent's right to collect had prescribed has no leg to stand on considering that petitioner already partially paid its 1994 tax deficiencies on 08 January 2008 and 29 January 2009. If petitioner really believed that respondent's right to collect has prescribed, it should not have paid the 1994 tax deficiencies and maintained its position that respondent has no more right to collect."

Petitioner filed an Omnibus Motion (i) To Set Preliminary Hearing to Resolve Issue of Prescription, and (ii) To Defer Pre-trial Conference[30] on March 11, 2015.

On the other hand, respondent filed an Amended Pre-Trial Brief (for the Respondent)[31] on March 13, 2015.

On April 20, 2015, the Court issued a Resolution denying petitioner's motion to set preliminary hearing to resolve the issue of prescription and explained that the said issue can be threshed out during the trial of this case and shall be resolved together when this case is submitted for decision.[32]

Meanwhile, after several cancellations, the pre-trial conference was finally reset to September 8, 2015.[33]

Petitioner filed its Pre-Trial Brief[34] on September 3, 2015.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[35] on October 5, 2015.

On November 16, 2015, a Pre-Trial Order was issued, terminating the pre-trial of the case and setting the initial presentation of petitioner's evidence.[36]

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[30] Docket, vol. II, pp. 502-509.
[31] Docket, vol. II, pp. 533-536.
[32] Docket, vol. II, pp. 563-565.
[33] Order dated July 23, 2015, docket, vol. II, p. 577.
[34] Docket, vol. II, pp. 596-611.
[35] Docket, vol. II, pp. 692-706.
[36] Docket, vol. II, pp. 722-732.

During the hearing held on January 19, 2016, petitioner presented its witness, Ms. Amelia M. Inciong, petitioner's General Manager, who testified on her Amended Supplemental Sworn Statement[37] dated January 14, 2016 and her Sworn Statement[38] dated March 5, 2014.[39]

Thereafter, petitioner formally offered Exhibits "P-1" to "P-28-a"[40] on February 2, 2016, which were all admitted as per the Court's Resolution[41] dated April 12, 2016.

On the other hand, respondent presented the testimonies of Revenue Officers Jesusa R. Miñano and Quirico A. Alburo, and Administrative Assistant III Armando C. Macatangay, all by way of their respective Judicial Affidavits dated October 10, 2016[42], February 9, 2017[43], and May 2, 2017[44]. As to respondent's documentary evidence, the Court admitted Exhibits "R-1" to "R-14-a", except for the denied Exhibits "R-8" to "R-10".[45]

The Court declared the case submitted for decision on April 19, 2018,[46] considering petitioner's Memorandum[47] filed on April 12, 2018 and the Records Verification Report[48] issued by the Court's Judicial Records Division on April 16, 2018 stating that respondent failed to file a Memorandum.

THE ISSUES

The parties submitted the following issues for the Court's disposition:[49]

1. Whether or not the deficiency income tax and EWT assessments were issued in accordance with the laws and regulations protecting petitioner's right to due process;

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[37] Docket, vol. II, pp. 749-761.
[38] Docket, vol. I, pp. 88-94.
[39] Minutes of the hearing held on January 19, 2016, docket, vol. II, p. 765.
[40] Docket, vol. II, pp. 769-783.
[41] Docket, vol. II, pp. 800-801.
[42] Exhibit "R-13", docket, vol. II, pp. 811-813; Minutes of the hearing held on January 16, 2017, docket, vol. II, p. 823.
[43] Exhibit "R-11", docket, vol. II, pp. 829-831; Minutes of the hearing held on February 13, 2017, docket, vol. II, p. 833.
[44] Exhibit "R-14", docket, vol. II, pp. 837-839; Minutes of the hearing held on September 4, 2017, docket, vol. II, p. 864.
[45] Resolution dated February 14, 2018, docket, vol. II, pp. 882-883.
[46] Resolution dated April 19, 2018, docket, vol. II, p. 913.
[47] Docket, vol. II, pp. 891-908.
[48] Records Verification Report dated April 16, 2018, docket, vol. II, p. 911.
[49] Issues, Pre-Trial Order dated November 16, 2015, docket, vol. II, p. 726.

2. Whether or not respondent's right to assess and collect deficiency income tax and EWT against petitioner for CY 1994 has already prescribed;

3. Whether or not the WDL, WOG and Notice of Tax Lien were validly issued;

4. Whether or not the deficiency income tax and deficiency EWT assessments for CY 1994 may be considered final and executory;

5. Whether or not respondent was duly informed of petitioner's change of address;

6. Whether or not the payments made by petitioner in years 2008 and 2009 constitute estoppel on its part to raise the defense of prescription; and

7. Whether or not petitioner is liable for deficiency income tax and EWT for CY 1994 in the aggregate amount of ₱6,127,243.07, inclusive of interest and penalties.

THE RULING OF THE COURT

At the outset, it must be noted that the Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[50] Thus, the Court deems it necessary to determine first whether or not the Court of Tax Appeals has jurisdiction over the present case.

In this regard, respondent alleges in his Answer that petitioner failed to timely file its protest; thus, the assessment already became final, executory and unappealable.

The National Internal Revenue Code of 1997 provides for the procedure in protesting an assessment, thus:

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[50] *Ace Publications, Inc. vs. The Commissioner of Customs and the Collector of Customs*, G.R. No. L-18808, May 29, 1964.

> "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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> 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.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

It is clear from the foregoing that the taxpayer may protest the assessment within a period of thirty (30) days from receipt thereof and that failure to contest the assessment within the 30-day period renders the assessment final, executory, and demandable.

However, a perusal of the records shows that there was no valid service of the FAN to petitioner.

While respondent maintains that the FAN was duly mailed, petitioner directly denies its receipt.

Let it be stressed that it is imperative for respondent to satisfactorily prove the release, mailing or sending of the FAN. This was the pronouncement of the Supreme Court in the case of *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*[51], citing the case of *Nava vs. Commissioner of Internal Revenue*[52], the pertinent portion of which reads:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, **this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice**; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." *(Emphasis supplied)*

In this regard, it must be noted that Section 3(v) of Rule 131 of the Rules of Court provides that a letter duly directed and mailed is **deemed received in the regular course of the mail**.

However, 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.[53]

To prove that the FAN was properly served to petitioner, respondent presented the testimony of Mr. Armando C. Macatangay, the Administrative Assistant III/Record Custodian at the BIR. However, Mr. Macatangay merely testified that he mailed the transmittal letter with attached copies of Assessment Notice to petitioner for taxable year 1994 and that he was issued Registry Receipt No. 53477 by the Post Office, which he allegedly affixed in the transmittal letter for future reference.[54] The transmittal letter and the Registry Receipt were not presented by respondent during trial. In failing to present these documents, respondent failed to prove that the said transmittal letter was properly addressed to petitioner.

Even if we take into consideration the allegation in respondent's Answer to the Supplemental Petition for Review that the Final Assessment Notice No.

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[51] G.R. No. 157064, August 7, 2006.

[52] G.R. No. L-19470, January 30, 1965.

[53] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.

[54] Exhibit "R-14", docket, vol. II, p. 838.

34-1-000219-94 dated March 5, 1998 was duly mailed on the same date covered by Registry Receipt No. 53477 at the given address of petitioner as per its Income Tax Return, specifically at 1885 Pres. Quirino Ave., Paco, Manila, records show that the same was not the address of petitioner at the time the FAN was allegedly mailed.

The pieces of evidence of both parties show that before the alleged mailing of the FAN on March 5, 1998, respondent already knew that petitioner's new address is at 213 C. Santos St., Bo. Ugong, Pasig as reflected in the following correspondence:

1. Letters of Authority dated **September 18, 1995** and **February 5, 1996** as presented by respondent;[55]

2. Second and Final Request for Presentation of Books of Accounts and Other Relevant Records dated **January 29, 1996** sent to petitioner by respondent;[56] and

3. Notice of Informal Conference dated **August 8, 1996** sent to petitioner by respondent.[57]

Hence, despite the absence of a formal written notice of petitioner's change of address, the fact remains that respondent became aware of petitioner's new address as shown by several documents in its records.[58]

From the foregoing, it can be inferred that respondent still chose to send the FAN to petitioner's old address despite knowledge that petitioner had moved to its new address. Thus, it cannot be said that the mail matter was properly addressed.

The High Court further held in *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*[59] that:

> "What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of

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[55] Exhibits "R-2" and "R-3", BIR Records, pp. 53 and 57.
[56] Exhibit "P-20", docket, vol. II, p. 651; BIR Records, p. 54
[57] Exhibit "P-22", docket, vol. II, p. 653; BIR Records, p. 67.
[58] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils. Inc.,* G.R. No. 198677, November 26, 2014.
[59] G.R. No. 157064, August 7, 2006.

Posts. This 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."

As already noted by the Court, respondent failed to present the registry receipt, the registry return card, the transmittal letter itself or any certification from the Bureau of Posts pertaining to the alleged mailing of the FAN.

Considering the foregoing, it cannot be presumed that the letter, which in this case is the FAN, was received by petitioner in the ordinary course of the mail.

Furthermore, even assuming that the said presumption can be applied in this case, the same is merely a disputable presumption.

In the case of *Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc.*[60] and *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[61], the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was **indeed received by the addressee**.

Petitioner's witness, Ms. Amelia M. Inciong, petitioner's General Manager since 1987, testified that petitioner did not receive any FAN for the alleged deficiency taxes for CY 1994 from respondent.[62]

The denial of receipt of the FAN is likewise stated in petitioner's response letter to the WDL on its alleged non-payment of income tax and EWT for CY 1994[63], in the instant Petition for Review[64] and in the Memorandum[65] filed before the Court. Such direct denial shifts the burden upon respondent to prove that the letter which was allegedly mailed was indeed received by petitioner.

Respondent failed to present evidence to prove that petitioner actually received the FAN. There is nothing in the records which would show that the FAN was received by petitioner in accordance with law and pertinent jurisprudence.

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[60] G.R. No. L-38540, April 30, 1987.
[61] G.R. No. 157064, August 7, 2006.
[62] Docket, vol. I, pp. 90-92 and vol. II, p. 759.
[63] Exhibit "P-3", docket, vol. II, pp. 623-624.
[64] Docket, vol. I, pp. 12-15.
[65] Docket, vol. II, pp. 900-903.

Thus, the requirement of informing the taxpayer of the facts and the law on which the assessment was based as provided under Section 228 of the NIRC of 1997, as amended, was not satisfied by respondent.

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[66], the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

> "xxx It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
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>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**." (*Emphasis supplied*)

In the present case, petitioner was not properly informed of the basis of its tax liabilities. Clearly, respondent violated petitioner's right to due process when he issued the WDL No. 11-1476-13, the Notice of Tax Lien on TCT No. PT-100571[67], the Notice of Levy on Real Property[68], and the WOG[69] received by petitioner on February 6, 2014 because no valid notice of assessment was sent to petitioner. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[70]

Consequently, respondent's allegation that the FAN already attained finality for failure to protest the same is devoid of merit since petitioner cannot be expected to protest the FAN without first being properly informed of the basis of the assessment.

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[66] G.R. No. 155541, January 27, 2004.
[67] Exhibit "R-12", BIR Records, p. 256.
[68] Exhibit "R-7", BIR Records, p. 260.
[69] Exhibits "P-2-1" to "P-2-10", docket, vol. I, pp. 183-192.
[70] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils. Inc.,* G.R. No. 198677, November 26, 2014.

Considering that no valid notice of assessment was sent to petitioner, the assessment against petitioner for its tax liabilities for CY 1994, based on the FAN dated March 5, 1998 which was the basis of the issuance of WDL, Notice of Tax Lien and WOG, must be cancelled.

With the foregoing findings, the Court deems it unnecessary to resolve the remaining stipulated issues.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Assessment No. 34-1-000219-94 dated March 5, 1998, and the Warrant of Distraint and/or Levy No. 11-1476-13, the Warrants of Garnishment and the Notice of Tax Lien on TCT No. PT-100571 issued pursuant to the said assessment are all **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting 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