REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

10K SOUTH CONCRETE MIX SPECIALIST, INC.,
Respondent.

CTA EB NO. 2647
(CTA Case No. 9730)

Present:

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

Promulgated:
NOV 24 2023 4:30pm

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals

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[1] Posted on 30 June 2022, *Rollo*, pp. 5-61, with annexes.
[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

(**RRCTA**), filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). It seeks the reversal of the Decision dated 18 November 2021[3] (**assailed Decision**) and the Resolution dated 20 May 2022[4] (**assailed Resolution**) of the Court's Third Division[5] in CTA Case No. 9730, entitled *10K South Concrete Mix Specialist, Inc. v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner is the head of the Bureau of Internal Revenue (**BIR**), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith. He or she holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

Respondent 10K South Concrete Mix Specialist, Inc. (**respondent/10SCMSI**), on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 3rd Floor, Aseana Power Station, Pres. Macapagal Blvd., Brgy. Tambo, Parañaque City.[7] It is registered with the Philippine Securities and Exchange Commission (**SEC**) with Company Registration No. CS201218785 dated 10 October 2012.[8] It is also registered with the BIR with Certificate of Registration No. 9RC0000432936 and Tax Identification Number (**TIN**) 008-391-885-000.[9]

Respondent was established primarily to engage in general construction business, including the constructing, enlarging, repairing, developing or engaging in any work upon buildings, houses and

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.

3 Division Docket, Volume II, pp. 975-1002.

4 Id., pp. 1024-1030.

5 The Assailed Decision dated 18 November 2021 and the Assailed Resolution dated 20 May 2022 were penned by Associate Justice Erlinda P. Uy (Ret.), with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

6 Par. 9, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 342.

7 Par. 1, id., p. 341.

8 Par. 2, id.

9 Par. 4, id., p. 342.

condominiums, roads, plants, bridges, airfields, piers, waterworks, railroads and other structures, and to engage in the business of providing or producing concrete mix, asphalt mix, including raw materials thereof.[10]

FACTS OF THE CASE

The facts of the case, as culled from the assailed Decision[11], are as follows:

> ...
>
> On September 30, 2014, [petitioner] issued Letter of Authority No. LOA-052-2014-00000288 (SN: eLA201100078274) of even date, authorizing the examination of [respondent's] books of accounts and other accounting records for all internal revenue taxes for the period beginning from January 1, 2013 to December 31, 2013.
>
> On June 22, 2016, [petitioner] issued a Preliminary Assessment Notice (PAN) of even date, assessing [respondent] for alleged deficiency income tax, VAT and final withholding tax, together with compromise penalty and interests for taxable year 2013.
>
> Within the 15-day period to file a reply to the PAN, [respondent] filed its Reply to PAN dated July 15, 2016, questioning the validity of the aforesaid assessment.
>
> [Petitioner] claims that Assessment Notices and a Formal Assessment Notice (FAN) with Details of Discrepancies assessing [respondent] for alleged deficiency income tax, VAT and final withholding tax for taxable year 2013 were issued to [respondent] on August 2, 2016, detailed as follows:

Tax Type	Amount
Income Tax	₱24,487,932.62
VAT	17,870,968.89
Final Withholding Tax	842,001.85
Compromise Penalty	16,000.00
TOTAL	₱43,216,903.36

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10 Par. 3, id., p. 341.

11 Pursuant to Section 2, Rule 14 of the RRCTA stating that "in appealed cases, the Court may adopt by reference the findings and conclusions set forth in the decision, order or resolution appealed from".

Thereafter, on November 17, 2017, [respondent] received the following: (1) from the Bank of the Philippine Islands (BPI), a letter dated November 10, 2017, informing [respondent] that BPI received a Warrant of Garnishment dated November 2, 2017; and (2) from Security Bank, a Warrant of Garnishment dated November 2, 2017, which was received by Security Bank on November 9, 2017.

Aggrieved, [respondent] filed the instant *Petition for Review (With Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax)* on December 8, 2017. This case was initially assigned to the First Division of this Court.

The *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax* was set for hearing on January 18, 2018, and [respondent] was directed to submit the Judicial Affidavit/s of its witness/es in support of said motion. On January 15, 2018, [respondent] filed a *Submission (with Attached Judicial Affidavit of Ma. Soledad I. Cunano)*, and a *Motion to Dispense with the Payment of the Bond.*

In the *Order* dated February 1, 2018, the Court granted [petitioner's] *Motion for Extension to File Answer* filed on January 18, 2018, praying for an extension of thirty (30) days from January 26, 2018, or until February 25, 2018, to file his Answer.

On January 19, 2018, [respondent] filed a *Submission (with Attached Supplemental Judicial Affidavit of Ma. Soledad I. Cunano).*

During the hearing of [respondent's] *Urgent Motion to Lift Garnishment and To Suspend Collection of Tax* and *Motion to Dispense with the Payment of the Bond* on January 18, 2018 and January 25, 2018, [respondent] presented as witness its Accounting Head, Ma. Soledad I. Cunano (Soledad Cunano). She testified on direct examination by way of her *Judicial Affidavit* and *Supplemental Judicial Affidavit*, and she said that the garnishment and the collection of taxes jeopardized [respondent's] interests; that the method employed by [petitioner] in the collection of tax is not sanctioned by law and that prescription has set in insofar as the 1st and 2nd quarters of VAT and final withholding taxes for taxable year 2013 are concerned; and that [respondent] is entitled to the grant of its *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax* and the *Motion to Dispense with the Payment of Bond.*

On January 30, 2018, [respondent] filed its *Formal Offer of Evidence* relative to its *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax*, while [petitioner's] *Comment to [Respondent's] Formal Offer of Evidence* was filed on January 31, 2018.

Thereafter, on February 24, 2018, [petitioner] filed his *Answer* via registered mail (and received by the Court on March 5, 2018), interposing special and affirmative defenses, which include, among others, the following, *to wit*:

1) That during the administrative investigation by the BIR, [respondent] failed to substantiate or submit supporting evidence against the BIR findings shown under the Details of Discrepancies attached to the PAN and FAN;

2) That the falsities in [respondent's] returns provide ample basis for the application of the 10-year prescriptive period;

3) That the PAN and FAN were served to [respondent] through registered mail;

4) That the assessment issued against [respondent] for deficiency income tax, VAT, expanded withholding tax, documentary stamp tax, improperly accumulated earnings tax, and compromise penalty for taxable year 2013 were made in accordance with law and regulations; and

5) Assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise.

In the *Resolution* dated June 13, 2018, the Court admitted all of [respondent's] exhibits except for Exhibit "P-3". Of even date, [respondent] filed a *Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals* together with the *Judicial Affidavit of Enrico T. Pizarro*.

During the Pre-Trial Conference held on June 14, 2018, the parties agreed to submit their *Joint Stipulation of Facts and Issues* until June 29, 2018.

On June 18, 2018, [respondent] filed a *Motion for Reconsideration (with Motion to Set Commissioner's Hearing and Manifestation)* praying that the Court set another Commissioner's Hearing to allow [respondent] to correctly mark the Audited Financial Statements for fiscal years 2015 and 2016 as Exhibit "P-3"; reconsider the *Resolution* dated June 13, 2018 and admit Exhibit "P-3"; and note its manifestation relative to Exhibit "P-15". On June 20, 2018, [petitioner] filed his *Comment (to the Motion for Reconsideration dated June 18, 2018)*.

Thereafter, the parties filed their *Joint Stipulation of Facts and Issues* on June 28, 2018, which was approved in the *Resolution* dated July 4, 2018.

Moreover, the Court granted [respondent's] *Motion for Reconsideration* filed on June 18, 2018 and admitted Exhibit "P-3" in the *Resolution* dated July 26, 2018.

On August 3, 2018, [respondent] filed a *Motion for Leave to File Supplemental Judicial Affidavit (to the Judicial Affidavit of Ma. Soledad I. Cunano dated June 8, 2018)* and a *Submission (with Attached Supplemental Judicial Affidavit of Ma. Soledad I. Cunano dated August 3, 2018)*, in order to allege occurrences and events that transpired since the filing of Soledad Cunano's *Judicial Affidavit* dated June 8, 2018. The said *Motion* was granted by the Court in the *Order* dated August 9, 2018.

Meanwhile, the Court issued the *Pre-Trial Order* dated August 6, 2018.

[Respondent] filed its *Memorandum* on August 7, 2018, while [petitioner] filed his *Memorandum (Application for Issuance of Preliminary Injunction/TRO)* on August 11, 2018. Thus, [respondent's] *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax* incorporated in its *Petition for Review* filed on December 8, 2017, and *Motion to Dispense with the Payment of the Bond* filed on January 15, 2018, were submitted for resolution on September 3, 2018.

On September 24, 2018, the instant case was transferred to the Third Division pursuant to CTA Administrative Circular No. 02-2018, "*Reorganizing the Three (3) Divisions of the Court.*"

In the *Resolution* dated October 24, 2018, the Court granted [respondent's] *Urgent Motion to Lift Garnishment and To Suspend the Collection of Tax*, and its *Motion to Dispense with the Payment of Bond* and ordered the lifting the Warrant of Garnishment dated November 2, 2017 pending the final disposition of the instant case; and the cash deposit or bond was dispensed with. Moreover, [petitioner] was ordered to cease and desist from collecting the subject deficiency income tax, VAT, final withholding tax, and compromise penalty for the taxable year 2013 in the aggregate amount of P43,216,093.36, inclusive of surcharge and interest, until the final resolution of the instant case. The Court likewise granted [respondent's] *Omnibus Motion for the Submission of Amended ICPA Report and for the Cancellation of Hearing on September 25, 2018.*

Thereafter, trial on the main case ensued. [Respondent] recalled witness, Soledad Cunano, and presented as additional witness, Enrico T. Pizarro (Enrico Pizarro), the duly-commissioned Independent Certified Public Accountant (ICPA).

On March 6, 2019, [respondent] filed its *Formal Offer of Evidence.* In the *Resolution* dated May 27, 2019, the Court admitted

> [respondent's] exhibits except for Exhibits "P-24-D", "P-52", "P-55.1" to "P-55.6", "P-67.202", "P-67.403", "P-67.404", "P-67.320" and "P-67.321".
>
> On June 10, 2019, [respondent] filed an *Omnibus Motion for Reconsideration and Motion to Reopen Proceedings* praying, among others, that the Court admit Exhibits "P-52", "P-52.144" to "P-52.413", "P-55.1" to "P-55.6", "P-67.202", "P-67.403" and "P-67.404". The Court partially granted said *Motion* on August 27, 2019; thus, setting the recall of [respondent's] witness, ICPA Enrico Pizarro, on September 17, 2019.
>
> Thereafter, [respondent] filed a *Supplemental Formal Offer of Evidence* on September 20, 2019. On November 25, 2019, the Court issued the *Resolution* admitting [respondent's] Exhibits "P-52", "P-52.144" to "P-52.271", "P-52.275" to "P-52.260", "P-52.362" to "P-52.413", "P-55.1" to "P-55.6", "P-67.202", "P-67.403", "P-67.404", "P-72", "P-72-A", and "P-73", and denying Exhibits "P-52.272" to "P-52.272", for not being properly or completely scanned, and "P-52.361", for not being found in the records.
>
> For his part, [petitioner] presented a sole witness, Revenue Officer Eugene Valentine V. Berganio (RO Berganio).
>
> Thereafter, [petitioner] filed his *Formal Offer of Evidence* on December 17, 2019, while [respondent] filed its *Comment (On [Petitioner's] Formal Offer of Evidence Dated December 16, 2019)* on December 20, 2019. On March 9, 2020, the Court issued the Resolution admitting all of [petitioner's] exhibits.
>
> Considering the filing of [respondent's] *Memorandum* on July 16, 2020, without [petitioner's] *Memorandum*, the instant case was submitted for decision on December 21, 2020.[12]
>
> ...

On 18 November 2021, the Third Division promulgated the assailed Decision.[13] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Assessment Notice and Assessment Notices all dated August 2, 2016 are hereby **CANCELLED** and **SET ASIDE**, and the Warrant of Garnishment No. WG-RR8-2017-09-0637-09 addressed to Security Bank and Trust Company, and Warrant of Garnishment No. WG-RR8-

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12 Supra at note 3, pp. 976-982; Citations omitted.

13 Supra at note 3.

> 2017-09-0637-06 addressed to BPI, both dated November 2, 2017, are hereby declared **NULL** and **VOID**.
>
> **SO ORDERED.**
>
> ...

The Third Division cancelled and set aside the subject Formal Assessment Notice (**FAN**) and Assessment Notices (**ANs**)[14] on the following grounds: (1) petitioner failed to present any competent evidence to prove the fact of mailing to, and actual receipt by, respondent of the FAN and ANs, in violation of the due process requirements under Section 228[15] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Revenue Regulations (**RR**) No. 12-99[16], as amended; and, (2) petitioner failed to assess respondent for alleged deficiency taxes within the three (3)-year prescriptive period under Section 203[17] of the NIRC of 1997, as amended.

Aggrieved, on 10 January 2022, petitioner filed a Motion for Reconsideration[18] (**MR**). After receipt of respondent's "Comment (On [Petitioner's MR] dated January 10, 2022)"[19] thereto, the Third Division promulgated the assailed Resolution[20] denying petitioner's MR for lack of merit. The dispositive portion of the assailed Resolution states:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

Unsatisfied, on 30 June 2022, petitioner filed the instant petition[21] before the Court *En Banc*, contesting the assailed Decision and Resolution.

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14 Exhibit "R-2", BIR Records, pp. 445-453; Division Docket, Volume II, pp. 904-912.

15 **SEC. 228.** *Protesting of Assessment.* — ...

16 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.

17 **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — ...

18 Division Docket, Volume II, pp. 1003-1006.

19 Id., pp. 1010-1020.

20 Supra at note 4.

21 Supra at note 1.

Earlier, on 20 June 2022, petitioner filed a "Motion for Extension of Time to File Petition for Review"[22] (**Motion for Time Extension**), asking for an additional period of fifteen (15) days from 18 June 2022, or until 03 July 2022, within which to file his or her Petition for Review. In a Minute Resolution dated 07 July 2022[23], the Court *En Banc* deemed as granted petitioner's Motion for Time Extension since the instant petition has already been filed by registered mail on 30 June 2022 and it received the same on 05 July 2022.

In the Resolution dated 29 July 2022[24], the Court *En Banc* ordered respondent to file a comment on the instant petition within ten (10) days from notice. In compliance therewith, respondent filed its "Comment (on Petitioner's Petition for Review dated June 29, 2022)"[25] on 11 August 2022.

In the Resolution dated 07 September 2022[26], the Court *En Banc* noted respondent's Comment[27] and, pursuant to Parts I.1.B[28] and II[29] of A.M. No. 11-1-5-SC-PHILJA or the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*, referred the case to the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation. However, the parties decided not to have their case mediated by the PMC-CTA.[30]

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22 *Rollo*, pp. 1-3.
23 Id., p. 4.
24 Id., pp. 64-65.
25 Id., pp. 66-83.
26 Id., pp. 85-86.
27 Supra at note 25.
28 I.1. The following cases may be referred to mediation:

...

B. *Cases within the jurisdiction of the Court En Banc*:
Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies — BIR, BOC, Department of Finance, Department of Trade and Industry, Department of Agriculture.

29 II. *Referral to Mediation*

The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.

A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center — Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

30 *See* No Agreement to Mediate dated 05 October 2022, *Rollo*, p. 87.

On 17 November 2022, the Court *En Banc* submitted the case for for decision.[31]

ISSUE

The Court *En Banc* notes that the present Petition for Review did not state any specific assigned errors. However, a perusal of the petition's contents would show that the main issue to be resolved is as follows -

> WHETHER THE THIRD DIVISION ERRED IN FINDING THAT THERE WAS NO PROOF THAT THE FORMAL ASSESSMENT NOTICE (FAN) AND ASSESSMENT NOTICES (ANs) WERE SENT TO AND RECEIVED BY RESPONDENT 10K SOUTH CONCRETE MIX SPECIALIST, INC.

ARGUMENTS

In support of the instant petition, petitioner contends that the FAN and ANs[32], all dated 02 August 2016, were served on respondent at its registered address, *i.e.*, 3rd Floor, Aseana Power Station, Pres. Macapagal Blvd., Brgy. Tambo, Parañaque City, which is the same address where all other previous notices and/or communications were served or sent.

According to petitioner, Revenue Officer Eugene Valentine V. Berganio (**RO Berganio**) has already confirmed that the FAN and ANs were mailed to respondent's registered address, as evidenced by the Record of Cases of the Administrative Division of the BIR Revenue Region (**RR**) No. 8, Makati City[33] (**Record of Cases**), and the Certification from the Postmaster of Parañaque Central Post Office[34] dated 23 August 2018 (**Postmaster Certification**). Based on the said documents, the subject FAN and ANs[35] allegedly mailed (with Registry Receipt No. AC266119995ZZ) were served by a certain Michael Torres

31 Id., pp. 89-90.
32 Supra at note 14.
33 Exhibit "R-3", BIR Records, p. 454; Division Docket, Volume II, p. 913.
34 Exhibit "R-4", Division Docket, Volume II, p. 902.
35 Supra at note 14.

(**Torres**) and respondent's representative, Camille Biong (**Biong**), received them on 05 October 2016.

Despite respondent's denial of its receipt of the FAN and ANs, petitioner maintains that he or she was able to prove that such documents were indeed mailed to and received by respondent as shown by the Postmaster Certification.

Petitioner further invokes the principle that a public official enjoys the presumption of regularity in the discharge of his or her official duties and functions. It is allegedly clear that the subject FAN and ANs were sent *via* registered mail and that Biong received them on respondent's behalf; thus, the FAN and ANs should be deemed to have been properly served on respondent in the absence of a clear indicia of partiality or malice on petitioner's part.

Petitioner also insists that for respondent's failure to file a protest against the FAN and ANs within the statutory period, the assessment is now final, executory, and demandable. Consequently, respondent is already precluded from questioning the assessment's validity.

On the other hand, in its Comment[36], respondent points out that the Third Division has already discussed and resolved petitioner's arguments in the assailed Decision and Resolution. In fact, the grounds relied upon and the matters raised in the present petition before the Court *En Banc* are mere restatements of those raised in his or her MR on the assailed Decision.

Respondent reiterates its contention that petitioner failed to prove that the subject FAN and ANs[37] were properly mailed since the latter did not present or show any registry receipt to prove the fact of mailing the same, nor did he or she offer the affidavit of the person who mailed them. It maintains that the presentation of the Postmaster Certification without presenting the judicical affidavit of the person mailing is insufficient to prove the fact of service.

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36 Supra at note 25.
37 Supra at note 14.

Respondent also echoes the Third Division's finding that both the Record of Cases[38] and the Postmaster Certification[39] do not indicate that the document with Registry Receipt No. AC266119995ZZ mailed to it (as allegedly delivered by Torres and received by its representative Biong) pertains to the subject FAN and ANs.

As regards the legal presumption that mail matters are received in the regular course of mail whenever sent by registered mail, respondent counter-argues that the said presumption could not apply in the present case since it already directly denied (through its witness, Ma. Soledad I. Cunano [**Cunano**]) that it received the subject FAN and ANs, either personally or through registered mail. When there is a direct denial of receipt, the burden is shifted to the BIR to prove that that letter mailed was received by the addressee.[40]

On this note, respondent likewise echoes the Third Division's finding that Torres, the person who allegedly delivered the document mailed with Registry Receipt No. AC266119995ZZ, neither executed a judicial affidavit nor was he presented before the Court. Assuming that Biong received the purported document that Torres delivered, petitioner still failed to prove that Biong is respondent's authorized representative. As such, petitioner failed to prove that respondent received the subject FAN and ANs.

Lastly, respondent asserts that since petitioner was not able to prove that the subject FAN and ANs were properly mailed to and duly received by its authorized representative, there can be no valid FAN and ANs to begin with. Consequently, it cannot be expected to mount an effective or intelligent protest, or to file a protest at all. Accordingly, respondent claims to have been deprived of a fair opportunity to be informed of the legal and factual bases of the assessment against it, thereby violating its right to due process. With this violation, respondent insists that the Third Division correctly struck down petitioner's assessment as null and void.

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38 Supra at note 33.

39 Supra at note 34.

40 See *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, 07 August 2006; *Republic of the Phils. v. The Court of Appeals and Nielson & Company, Inc.*, G.R. No. L-38540, 30 April 1987.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present petition.

THE COURT *EN BANC* HAS JURISDICTION OVER THE PRESENT PETITION.

The Third Division promulgated the assailed Resolution[41] denying petitioner's MR on the assailed Decision[42] on 20 May 2022. Petitioner received the said assailed Resolution on 03 June 2022.[43]

Under Section 2(a)(1)[44], Rule 4 in relation to Section 3(b)[45], Rule 8 of the RRCTA, petitioner had fifteen (15) days from 03 June 2022 or **until 18 June 2022**, within which to file an appeal before this Court. Considering that 18 June 2022 fell on a Saturday, the deadline for filing an appeal fell on the next working day, *i.e.*, **20 June 2022**, pursuant to Section 1[46], Rule 22 of the Rules of Court (**ROC**), as amended.

On 20 June 2022 or within the reglementary period for filing an appeal, petitioner posted a Motion for Time Extension[47], requesting an additional period of 15 days from 18 June 2022 or **until 03 July 2022**, within which to file his or her Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 07 July 2022.[48]

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41 Supra at note 4.

42 Supra at note 3.

43 See Notice of Resolution dated 25 May 2022 attached as Annex "B" to the present Petition for Review, *Rollo*, p. 42.

44 **SEC 2**. *Cases within the jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied)

45 Supra at note 2.

46 **SEC. 1**. *How to Compute* Time. — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday**, a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day**. (Emphasis supplied.)

47 Supra at note 22.

48 Supra at note 23.

Accordingly, on 30 June 2022, petitioner timely filed the present Petition for Review.[49] Hence, the Court *En Banc* validly acquired jurisdiction to take cognizance of this case.

We now proceed to the merits of the case.

Upon closer examination of petitioner's arguments in the present Petition for Review, it becomes evident that the issue raised herein and the grounds relied upon have already been exhaustively discussed and passed upon in the assailed Decision[50] and Resolution.[51] Nevertheless, if only to further elucidate on the Third Division's findings, We adopt its pronouncements relative to the issue raised herein as set out below, *in seriatim*.

SINCE PETITIONER FAILED TO SUFFICIENTLY PROVE THE FACT OF MAILING AND RECEIPT OF THE SUBJECT FORMAL ASSESSMENT NOTICE (FAN) AND ASSESSMENT NOTICES (ANs), THE ASSESSMENT IS VOID AS RESPONDENT WAS NOT ACCORDED DUE PROCESS.

We agree with the Third Division's ruling that petitioner failed to discharge the burden of proof that the subject FAN and ANs were mailed to and received by respondent. It must be emphasized that during the proceedings before the Third Division, respondent categorically and directly denied receipt of the FAN and ANs (either personally or through registered mail).[52] As mentioned in the assailed Decision, this was confirmed by respondent's witness, Cunano, in her Judicial Affidavit dated 15 January 2018[53], which she reiterated during her cross-examination.[54] For ease of reference, We quote the pertinent portions thereof, as follows:

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[49] Within the extended period granted by the Court *En Banc* in its Minute Resolution dated 07 July 2022; Supra at note 1.

[50] Supra at note 3.

[51] Supra at note 4.

[52] See Par. 21, V. Discussion, Petition for Review, supra at note 1, p. 7; Par. 37, IV. Discussion, Memorandum, Division Docket, Volume II, p. 936.

[53] Exhibit "P-10", Division Docket, Volume I, pp. 58-67; Emphasis supplied.

[54] TSN dated 09 August 2018, p. 15; Emphasis supplied.

...

Judicial Affidavit dated 15 January 2018

...

24\. Q: You mentioned earlier that you are testifying to support the motion to dispense with the bond. Why is this so?

A: The assessment was not done properly. Also, insofar as the Value-Added Tax for the 1st and 2nd Quarters of taxable year 2013, and the final withholding tax for the taxable year 2013 are concerned, the same have already prescribed.

25\. Q: What do you said (sic) the assessment was not done properly?

A: **[Respondent] never received a Formal Letter of Demand or a Final Assessment Notice allegedly served by [petitioner].**

We only received a Preliminary Assessment Notice last July 1, 2016, which we timely replied to on July 15, 2016. There was no action on the reply for months.

This is why on November 22, 2016, we sent a letter addressed to Mr. Jonas DP Amora, that the [respondent] already filed a Reply to the PAN and to follow up on the status of the case.

To our surprise, on November 17, 2017, we received a letter from BPI, informing the Company that BPI received a Warrant of Garnishment on November 10, 2017.

Also, on November 17, 2017, we received a Warrant of Garnishment from Security Bank which they received on November 9, 2017.

...

Transcript of Stenographic Notes (TSN) dated 09 August 2018

...

Q: Ms. Cunano, I am showing to you this letter dated August 18, 2016, signed by Mr. Jonas Ricamora, informing [respondent] that BIR acknowledged [respondent's] reply dated July 15, 2016 as well as **informing [respondent] that there was already a Formal Notice issued to the [respondent]. Did you receive this document?**

A: **No, We did not receive this document.**

...

Clearly from respondent's allegations in its pleadings and the foregoing testimony of its witness denying receipt of the FAN and ANs, it became incumbent upon petitioner to prove by competent evidence that the FAN and ANs were indeed mailed to and received by respondent, as held in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[55], citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[56] (**Barcelon**), *viz:*

> ...
>
> On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, *viz*:
>
>> Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion **and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee** (*Republic vs. Court of Appeals, 149 SCRA 351*). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965*:
>>
>>> "**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. Sunlife Assurance of Canada, 41 Phil 269*)."
>>
>> **...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**

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[55] G.R. No. 185371, 08 December 2010; Italics in the original text, underscoring supplied, emphasis in the original text and supplied.

[56] Supra at note 40.

have been signed by the Petitioner or its authorized representative. <u>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 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</u>. Thus:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (*Coll. of Int. Rev. vs. Bautista*, L-12250 and L-12259, May 27, 1959), 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."** (*Nava vs. CIR*, 13 SCRA 104, January 30, 1965)

The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. (*Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR*, CTA Case 4885, August 22, 1996).

...

In this case, although petitioner presented the Record of Cases[57] and the Postmaster Certification[58] (in *lieu* of the registry receipt or the registry return card relative to the purported mailing of the FAN and ANs to respondent), these pieces of evidence do not conclusively establish the fact of mailing. This is because the document referenced by Registry Receipt No. AC266119995ZZ does not unambiguously correspond to the FAN and ANs in question. As the Third Division correctly found, the Record of Cases[59] (see Row 4) and the Postmaster Certification[60] merely indicate that a certain document with Registry

[57] Supra at note 33.
[58] Supra at note 34.
[59] Supra at note 33.
[60] Supra at note 34; Emphasis and underscoring in the original text.

Receipt No. AC266119995ZZ was mailed to respondent on 02 August 2023, as shown below:

...

Record of Cases

...

AUGUST 2, 2016 BIR (REGISTERED)

NO.	POD/REG NO.	SENDER	SENDER ADDRESS	ADDRESSEE	ADDRESS	AMOUNT
4	AC266119995ZZ	BIR ASSESSMENT DIV	BIR BLDG. 313 SEN. GIL PUYAT AVE., MAKATI CITY	10K SOUTH CONCRETE MIX SPECIALIST, INC.	PRES. MACAPAGAL BLVD. 3F ASEANA POWER STATION, TAMBO, PARAÑAQUE CITY, METRO MANILA	Ref. No. 3 : 73

...

Postmaster Certification

...

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that based on the records of this office, Reg Letter No. AC 266 119 995 zz addressed to 10 K South Concrete Mix Specialist Inc. with address at Pres. Macapagal Blvd. 3F Aseana Power Station, Tambo Parañaque City was delivered by **LC Michael Torres and was received by Camile Biong on October 5, 2016.**

Issued this 23rd day of August 2018 in Parañaque City upon the request of Victor Eleazar S. J. Santos for whatever legal purpose it may serve.

Issued by:

(Sgd.)
EDNA O. DELA CRUZ
Postmaster
Attested by:

(Sgd.)
FE TALAVERA
Sr. LC/O.I.C. Reg. Letter Unit

(Sgd.)
MICHAEL TORRES
Sr./LC

...

We again quote, for emphasis, the admissions of petitioner's sole witness, RO Berganio, during his cross-examination, that: (1) Row 4 of the Record of Cases[61] did not mention that the document mailed to respondent was the FAN and ANs; and, (2) the Postmaster Certification[62] is silent about the FAN and ANs, *viz*:

> ...
>
> <u>TSN dated 05 December 2019 re: Record of Cases</u>[63]
>
> ATTY. BUTED
>
> Q: In Question No. 18, in your answer to Question No. 19 of your Judicial Affidavit, you said that the Assessment Notices and the FAN with details of discrepancies dated August 2, 2016 were mailed to the registered address of [respondent], correct?
>
> REVENUE OFFICER BERGANIO
>
> A: Yes.
>
> ATTY. BUTED
>
> Okay. So in your answer to Question 20 of your Judicial Affidavit, you said that these were mailed to the [respondent's] registered address based on the record of cases of the Administrative Division of the BIR and I am showing to you the said record of cases of the Administrative Division of the BIR marked as Exhibit R-3.
>
> Q: Where in the said record does it indicate that the documents were mailed to the [respondent's] registered address?
>
> REVENUE OFFICER BERGANIO
>
> A: Where in this record?
>
> ATTY. BUTED
>
> Q: Where in Exhibit R-3 does it indicate that the documents were mailed to the [respondent's] registered address?

---

61 Supra at note 33.
62 Supra at note 34; Emphasis and underscoring in the original text.
63 TSN dated 05 December 2019, pp. 10-13; Emphasis supplied.

REVENUE OFFICER BERGANIO

A: This is the address assumed on the record.

ATTY. BUTED

Q: Okay. So it's in Row No. 4, right?

REVENUE OFFICER BERGANIO

A: Yes.

ATTY. BUTED

Q: Okay. In Row No. 4 of Exhibit R-3, can you please read to this Honorable Court the exact details contained in Row No. 4? The exact details of the columns under Row No. 4.

REVENUE OFFICER BERGANIO

A: The first column is the registered number.

ATTY. BUTED

Q: Okay. How about the second column?

REVENUE OFFICER BERGANIO

A: BIR sender.

ATTY. BUTED

Q: Okay. The third column?

REVENUE OFFICER BERGANIO

A: Sender address.

ATTY. BUTED

Q: Okay. And the fourth column?

REVENUE OFFICER BERGANIO

A: Addressee 10K South Concrete.

ATTY. BUTED

Okay, the name of the [respondent].

Q: And the fifth column?

REVENUE OFFICER BERGANIO

A: The address as stated in this record.

ATTY. BUTED

Q: Okay. How about the sixth column? The sixth and the last column?

REVENUE OFFICER BERGANIO

A: The amount but the description here is the reference number.

ATTY. BUTED

Thank you, Mr. Witness.

Q: Will you agree to me if I say that **there is no mention in the record of the Assessment Notices and the FAN? It does not indicate?**

REVENUE OFFICER BERGANIO

A: **Well, based on this piece of paper, there is none.**

...

<u>TSN dated 05 December 2019 re: Postmaster Certification</u>[64]

...

ATTY. BUTED

Okay. Thank you, Mr. Witness. In your answer to Question 22 of your Judicial Affidavit, you said that the Assessment Notices and the FAN were received by the petitioner on October 5, 2016 in the person of Camille Biong based on a certification dated August 23, 2018 issued by the Post Master of Parañaque Central Post Office.

Q: So the certification dated August 23, 2018 marked as Exhibit R-4, can you please read to this Honorable Court the first paragraph of the said certification? The exact wordings of the first paragraph.

REVENUE OFFICER BERGANIO

A: The letter certification came from Parañaque Central Post Office.

---

64 Id., pp. 13-14; Emphasis supplied.

ATTY. BUTED

Okay.

REVENUE OFFICER BERGANIO

It says here "To whom it may concern: This is to certify that based on the records of this office, registered letter number AC266119995zz addressed to 10K South Concrete Mix Specialist, Inc., with address at President Macapagal Blvd. 3F Aseana Tower Station, Tambo, Parañaque City was delivered by LC Michael Torres* and was received by Camille Biong on October 5, 2016." Okay.

ATTY. BUTED

Thank you, Mr. Witness.

Q: Based on this, would you agree to me if I say that **there is no mention in the certification of the Assessment Notices and the FAN? There is no mention here of the exact wordings?**

REVENUE OFFICER BERGANIO

A: **In that certification, the letter is silent about the assessment notice.**

...

Indeed, petitioner's documents failed to provide any confirmation that the items mailed to respondent on 02 August 2016 were the subject FAN and ANs. While the Postmaster Certification[65] is generally considered sufficient proof of mailing, its evidentiary value in this instance is diminished because it fails to specify which document was actually delivered. As for the Record of Cases[66], it is evident that it lacks a specific connection to the subject FAN and ANs. It also appears to be a self-serving piece of evidence from the BIR personnel that ought to be given very little or no credence at all.

Notably, absent the aforesaid confirmation (*e.g.*, an Affidavit of Service from the BIR personnel who mailed them, or who oversees the mailing process, which details the steps taken and includes the relevant registry receipt) and based only on petitioner's self-serving assertions,

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[65] Supra at note 34.
[66] Supra at note 33.

(not corroborated by any other evidence), We cannot discount the possibility that the mail matters allegedly delivered were not the FAN and ANs subject of this case.

Similarly, petitioner provided no evidence attesting to the fact that it was respondent's duly authorized representative who received the mail, which supposedly contained the FAN and ANs. RO Berganio even admitted during cross-examination that he was not aware of the identity of Biong, the alleged recipient on behalf of respondent, stating:

> ...
>
> TSN dated 05 December 2019 re: Biong's Identity[67]
>
> ...
>
> ATTY. BUTED
>
> Thank you, Mr. Witness.
>
> Q: **Would you happen to know who is Camille Biong** who is indicated, mentioned in the certification?
>
> REVENUE OFFICER BERGANIO
>
> A: **I cannot identify Camille Biong because it's no longer my job to execute the step in the delivery of the Assessment Notice. It is the Administrative Division.**
>
> ...

It should be noted that even assuming *arguendo* that the FAN and ANs were served at respondent's proper address, it remains petitioner's duty to prove the actual service thereof following respondent's denial of their receipt. In *Barcelon*[68], where the taxpayer also denied the FAN's receipt, the Supreme Court ruled in this wise:

> ...
>
> In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was

67 TSN dated 05 December 2019, p. 14; Emphasis supplied.
68 Supra at note 40; Citations omitted, italics in the original text and emphasis supplied.

> properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still 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.**
>
> ...

In relation to the above ruling, the Supreme Court's decision in *Republic of the Philippines v. Resins, Incorporated*[69], states that registry receipts alone are insufficient proof of mailing, to wit:

> ...
>
> OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail ***and*** that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. **Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters.** Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. **It cannot be stressed enough that "*it is the registry receipt issued by the mailing office* <u>*and*</u> *the affidavit of the person mailing*, which proves service made through registered mail." Absent one or the other, or worse both, there is no proof of service.**
>
> ...

In the case at bar, besides the fact that petitioner never made an effort to identify the person who allegedly received the FAN and ANs, he or she also omitted to present the registry receipt therefor as well as the affidavit of the person who actually mailed them. Considering that neither the affidavit of said person nor a certified sworn copy of the notice given by the postmaster to the addressee (respondent) was submitted as proof of receipt, the inescapable conclusion is that petitioner has failed to discharge his or her burden to present proof to

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69 G.R. No. 175891, 12 January 2011; Citations omitted, italics in the original text, and emphasis in the original text and supplied.

show that respondent indeed received the FAN and ANs, which were sent through registered mail.

With the Court *En Banc's* finding that petitioner failed to sufficiently establish that respondent in fact received the subject FAN and ANs, the assessment must necessarily be declared a nullity for violating the latter's right to due process.

Section 228 of the NIRC of 1997, as amended, provides:

> ...
>
> Section 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.**[70]
>
> ...

In interpreting such statutory requirement, the Supreme Court, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[71], held that:

> ...
>
> "The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory." **This is an essential requirement of due process and applies to the Preliminary Assessment Notice, <u>Final Letter of Demand with the Final Assessment Notices</u>, and the Final Decision on Disputed Assessment.**
>
> ...

---

70 Emphasis supplied.

71 G.R. Nos. 201398-99, 03 October 2018; Citation omitted, emphasis and underscoring supplied.

In *Commissioner of Internal Revenue v. Azucena T. Reyes*[72], the Supreme Court also ruled:

> ...
>
> **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.** In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. ...
>
> ...

In sum, in the absence of valid service of the questioned FAN and ANs to respondent, and without evidence of receipt by either respondent or its duly authorized representative, the subject deficiency assessments cannot be considered as final, executory, and demandable.

Accordingly, there being no reversible error, the Court *En Banc* finds no cogent reason or justification to disturb the conclusions reached by the Third Division.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 18 November 2021 and 20 May 2022, respectively, in CTA Case No. 9730, entitled *10K South Concrete Mix Specialist, Inc. v. Commissioner of Internal Revenue* are hereby **AFFIRMED.**

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from collecting or taking further action on the subject deficiency taxes assessed against respondent 10K South Concrete Mix Specialist, Inc. as provided in the Formal Assessment Notice and Assessment Notices in the aggregate amount of ₱43,216,903.36, representing deficiency income tax, value-added tax and final withholding tax for the taxable year 2013.

72 G.R. No. 159694, 27 January 2006; Citations omitted and emphasis supplied.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice