REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1260** (CTA Case No. 8394)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** JJ.
MANUEL B. PALAGANAS, doing business under the Name & Style STEMIKO COMMERCIAL, Respondent.	***Promulgated:***
	JUN 16 2016 1:23 p.m.

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DECISION

UY, J.:

This Petition for Review[1] filed on December 20, 2014, seeks the reversal and setting aside of the Decision dated September 17, 2014,[2] and the Resolution dated November 14, 2014,[3] both promulgated by the Second Division of this Court (or "Court in Division") in CTA Case No. 8394, entitled, *"Manuel B. Palaganas doing business under the name and Style Stemiko Commercial, Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

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[1] EB Docket, pp. 5 to 14.

[2] EB Docket, pp. 19 to 34; Penned by Associate Justice Amelia R. Cotangco-Manalastas, and concurred in by Associate Justice Juanito C. Castañeda Jr. and Associate Justice Caesar A. Casanova.

[3] EB Docket, pp. 36 to 39; *supra.*

Decision dated September 17, 2014:

> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated July 29, 2009, the amended Preliminary Assessment Notice dated January 18, 2010, and the Final Assessment Notice dated January 28, 2010 are **CANCELLED** and **SET ASIDE** for being void. The Warrant of Distraint and/or Levy dated November 18, 2010 and the Notices of Tax Lien dated November 30, 2010 addressed to the Registry of Deeds and the City Assessor of Muntinlupa City are likewise **CANCELLED** and **WITHDRAWN.**
>
> **SO ORDERED.**"

Resolution dated November 14, 2014:

> "**WHEREFORE,** premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.

Respondent, upon the other hand, is a Filipino, of legal age, married and doing business under the name and style Stemiko Commercial, with office address located at 11-A Sunblest Compound, KM 23, West Service Road, Cupang, Muntinlupa City.

Respondent received a Preliminary Collection Letter dated October 12, 2010 for the collection of his alleged unpaid tax liability in the amount of ₱28,657,353.87, inclusive of twenty-five percent (25%) surcharge and twenty percent (20%) interest.

On November 18, 2010, petitioner issued a Warrant of Distraint and/or Levy. Thereafter, petitioner issued two Notices of Tax Lien dated November 30, 2010, addressed to the City Assessor and to the Registry of Deeds of Muntinlupa City.

On May 25, 2011, respondent filed a Letter-Protest dated May 22, 2011 with the Collection Section of Revenue District Office No. 53B of Muntinlupa City, protesting the aforesaid Preliminary Collection Letter.

Alleging that petitioner failed to act on his Letter-Protest within the 180-day period given to petitioner, which purportedly expired on November 21, 2011, respondent filed a *Petition for Review* with the Court in Division on December 14, 2011. The case was docketed as CTA Case No. 8394.

Petitioner filed her *Answer* on February 6, 2012, wherein she interposed the following special and affirmative defenses:

> "6) The assessments in question were made and issued in accordance with law, rules and regulations;
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> 7) The Preliminary Assessment Notice dated July 29, 2009 was received by the [respondent] on November 6, 2009;
>
> 8) The Amended Preliminary Assessment dated January 18, 2010 was received by [respondent] via Registered Mail on April 21, 2010;
>
> 10) Verification of the records disclosed that the deficiency Income Tax and VAT resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching – BOC Data Program as declared in [respondent's] tax returns, hence assessed in accordance with Section 31, 32, 106 and 108 of the 1997 NIRC, as amended and RMO No. 32-2007;
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> 11) Under Section 228 of the Tax Code of 1997, as implemented by Revenue Regulations No. 12-99, assessment notice may be protested administratively by filing a request for reconsideration or reinvestigation, in such form and manner as may be prescribed by implementing rules and regulations, within thirty (30) days from receipt of the assessment, otherwise the assessment shall become final, executory and

demandable;

12) The [respondent] failed to file a protest within thirty (30) days from receipt of the assessments, thus, the assessments have long become final, executory and demandable;

13) The Assessment Notices on Income Tax and VAT, both dated January 28, 2010, clearly show compliance with the requirements under Section 228 of the NIRC as implemented by Revenue Regulations No. 12-99. Petitioner was duly informed of the facts, applicable law, ruled and regulations on which the assessment was based;

14) Assessment are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. *(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109)*;

15) Finally, [respondent] should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance *(Commissioner vs. Algue, Inc. L-28896, 17 February 1988)*. Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another – *Non videtur quisquam id capere quod ei necesse est alii restitutere.*"

Respondent filed his *Reply* in CTA Case No. 8394 on February 14, 2012, asserting that neither he nor any authorized person received any notices from petitioner, which is vital in order for respondent to be given due process and that the assessment was gravely erroneous as the income treatment mentioned therein was wrong.

During the Pre-Trial Conference held on March 15, 2012 before the Court in Division, both parties' counsel agreed to file their Joint Stipulation of Facts and Issues (JSFI) and the same was filed on April 2, 2012. In the Resolution dated April 3, 2012, the Court in Division approved the JSFI and terminated pre-trial.

Thereafter, the parties presented their respective testimonial and documentary evidence. On the part of herein respondent, it presented Danilo Y. Ponay as the Court commissioned Independent Certified Public Accountant (CPA) of the case to examine and verify respondent's voluminous documents, together with Wilfredo Ballerda, Jr. and Manuel B. Palaganas.

For her part, herein petitioner presented Revenue Officers Ofelia N. Felipe and Rebecca S. Mallorca.

The case was submitted for decision on April 1, 2014, considering the *Memorandum for [Respondent]* filed on March 17, 2014 and petitioner's *Memorandum* filed on March 14, 2014. Subsequently, respondent filed a *Reply-Memorandum* on April 2, 2014.

As already stated, the Court in Division granted the Petition for Review in the assailed Decision,[4] thereby cancelling the Preliminary Assessment Notice (PAN) dated July 29, 2009, the amended PAN dated January 18, 2010, the Final Assessment Notice (FAN) dated January 28, 2010, the Warrant of Distraint and/or Levy dated November 18, 2010, and the Notices of Tax Lien dated November 30, 2010.

Aggrieved, petitioner filed a *Motion for Reconsideration (of the Decision dated 17 September 2014)* on October 3, 2014.[5] Respondent filed its *Comment To [Petitioner's] Motion for Reconsideration To The Decision of this Honorable Court dated 17 September 2014* on October 22, 2015.[6]

On November 14, 2014, the Court in Division rendered the assailed Resolution denying petitioner's *Motion for Reconsideration* for lack of merit.[7]

Consequently, petitioner filed the instant *Petition for Review*[8] before the Court *En Banc* within the extension period granted on December 20, 2014, praying for the reversal of the assailed Decision

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[4] EB Docket, pp. 19 to 34.
[5] EB Docket, pp. 40 to 47; Division Docket (CTA Case No. 8394) – Vol. II, pp. 740 to 747.
[6] Division Docket (CTA Case No. 8394) – Vol. II, pp. 751 to 755.
[7] EB Docket, pp. 36 to 39; Division Docket (CTA Case No. 8394) – Vol. II, pp. 757 to 760.
[8] EB Docket, pp. 5 to 14.

and the Resolution dated November 14, 2014, both rendered by the Court in Division in CTA Case No. 8394.

In the Resolution dated February 25, 2015, the Court *En Banc* directed petitioner to submit the requisite proof of service of her Petition for Review in accordance with Section 13, Rule 13 of the 1997 Rules on Civil Procedures.[9]

In compliance thereto, petitioner filed her *Manifestation and Compliance*[10] on March 23, 2015, submitting the Affidavit of Service dated March 19, 2015 duly executed by Catherine N. Herrera. Said *Manifestation and Compliance* was noted by the Court *En Banc* in its Resolution dated March 25, 2015.[11]

Without necessarily giving due course to the *Petition for Review*, respondent was ordered by the Court *En Banc* to file a Comment to the said Petition for Review.[12] Respondent filed its *Comment (To Petitioner's Petition for Review)* on June 4, 2015.[13]

In view thereof, the instant *Petition for Review* was submitted for decision on June 22, 2015.[14]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues in her Petition for Review, to wit:

> "Whether the Honorable Second Division of the CTA erred in granting respondent's petition for review filed on December 14, 2011.
>
> "Whether the Honorable Second Division of the CTA erred in denying herein petitioner's Motion for Reconsideration."[15]

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[9] EB Docket, pp. 51 to 53.
[10] EB Docket, pp. 54 to 56.
[11] EB Docket, pp. 57 to 58.
[12] EB Docket, pp. 59 to 60.
[13] EB Docket, pp. 67 to 83.
[14] Resolution dated June 22, 2015, EB Docket, pp. 85 to 86.
[15] EB Docket, p. 7.

In other words, the crux of the controversy is: whether or not the Court in Division erred in cancelling and setting aside the PAN dated January 18, 2010 and FAN dated January 28, 2010; and in cancelling and withdrawing the Warrant of Distraint and/or Levy dated November 18, 2010 and the Notices of Tax Lien dated November 30, 2010.

Petitioner's arguments:

Petitioner argues that respondent's right to due process was not violated when the assessment notices were issued. According to petitioner, the PAN dated July 29, 2009 was properly received by respondent's employee, Roselyn Olaera, as evidenced by the signature appearing on the first page of the said PAN; while the Amended PAN dated January 18, 2010 and the FAN dated January 28, 2010, sent through registered mail, were received by respondent on April 21, 2010, as evidenced by the registry return receipts.

Moreover, petitioner contends that since respondent received the FAN on April 21, 2010, respondent's failure to file a protest against the FAN within thirty (30) days from receipt thereof renders said assessment final, executory and demandable pursuant to Section 3.1.5 of the Revenue Regulations No. 12-99.

Finally, petitioner asserts that this Court has no jurisdiction over the case because respondent belatedly filed his petition for review. According to petitioner, respondent should not have waited for the 180-day period prescribed under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, because that applies only to protest on assessment notice and not to collection letter; instead respondent should have filed its petition for review with this Court within thirty (30) days from receipt of the Preliminary Collection Letter and Warrant of Distraint and Levy, which are considered as petitioner's final decision.

Respondent's counter-arguments:

On the other hand, respondent denies receiving the PAN, Amended PAN and FAN. According to respondent, the PAN was served to a certain Roselyn Olaera, who was, per the payroll and list of employees of the company, neither connected with the business of, nor employed by respondent; and the signature appearing on the registry return receipts, supposedly signifying respondent receipt of the Amended PAN and FAN, does not belong to respondent. Thus, petitioner allegedly failed to establish her position that there was in fact proper service of said assessment notices.

Petitioner further points out that because there was no service of said assessment notices to respondent, the effect is as if no assessment was ever made; hence, petitioner's right to assess has long prescribed.

Lastly, respondent contends that the Preliminary Collection Letter should be considered as the assessment notice for purposes of filing a protest under Section 228 of the NIRC of 1997, as amended because it was the first notice received by respondent. Consequently, the 30-day and 180-day periods under Section 228 must be observed. Considering petitioner's failure to act on respondent's protest of the Preliminary Collection Letter, respondent's appeal with this Court, within thirty (30) days after the lapse of the180-day period, was timely filed.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

It is petitioner's posture that respondent was not denied due process in the issuance of the assessment notice. According to petitioner, the PAN dated July 29, 2009 was received by respondent's employee, as evidenced by the name and signature appearing on the said PAN; while the Amended PAN dated January 18, 2010 and FAN dated January 28, 2010, both sent through registered mail, were received by respondent's agent, as evidenced by the signature appearing on the registry return receipts issued by the Philippine Postal Corporation.

We are not swayed.

Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[16] Considering that in this case, petitioner is the one insisting that the assessment notices were received by respondent through its employee or authorized representative, she bears the burden of

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[16] *MOF Company, Inc. vs. Shin Yang Brokerage Corporation,* G.R. No. 172822, December 18, 2009. See also *Morales vs. Skills International Company,* G.R. No. 149285, August 30, 2006.

proving the same. Unfortunately, petitioner miserably failed to discharge this burden of proof.

To prove that respondent received the subject PAN petitioner presented (1) the name and signature of Roselyn Olaera dated November 6, 2009[17] and the (2) testimony of Rebecca Mallorca[18], the revenue examiner who personally served the said PAN.

However, a cursory perusal of the foregoing evidence reveals nothing about the identity and authority of Ms. Olaera to receive the subject PAN on behalf of respondent. While the name and signature appearing on the subject PAN shows that a certain Roselyn Olaera received said assessment notice on November 6, 2009, it does not in any way prove that Ms. Olaera is respondent's employee or authorized representative.

Similarly, as correctly pointed out by the Court in Division, the testimony of Ms. Mallorca fell short of proving Ms. Olaera's authority to receive the subject PAN on behalf of respondent. Pertinent portions of said testimony, upon cross-examination of respondent's counsel, are quoted as follows:

> "ATTY. LUGO:
> Q. The Preliminary Assessment Notice dated July 29, 2009, did you personally serve the same?
>
> MS. MALLORCA:
> A. Yes.
>
> ATTY. LUGO
> Q. Are you the one who serve the same?
>
> MS. MALLORCA
> A. Yes.
>
> ATTY. LUGO
> Q. And was it received personally by petitioner?
>
> MS. MALLORCA
> A. **It was received by certain Rosalyn Abera (*Roselyn Olaera)*, the one available at their office.**

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[17] Exhibit "10", BIR Records, p. 55.
[18] Exhibit "20", Division Docket (CTA Case No. 8394) – Vol. I, pp. 629 to 635.

ATTY. LUGO
Q. Ms. Witness what is the relation of Ms. Abera *(Ms. Olaera)* to Mr. Palaganas?

MS. MALLORCA
A. **At that time, nobody was around. Mr. Palaganas was not around, so we let anybody received at their office.**

ATTY. LUGO:
Q. But do you know what is the relation of Ms. Abera *(Ms. Olaera)* to petitioner?

MS. MALLORCA:
A. She was the one authorized to received *(sic)*, sir.

ATTY. LUGO:
Q. **Did you ascertain that Ms. Abera *(Ms. Olaera)* was an employee of petitioner?**

MS. MALLORCA:
A. **She said she is an employee of the petitioner.**

ATTY. LUGO:
Q. **Did you inquire as to any identification card was indeed an employee of the petitioner?**

MS. MALLORCA:
A. **She was the one at the office of the petitioner.**

ATTY. HERRERA:
Your Honor, the witness has already answered that Ms. Roselyn Abera *(Ms. Roselyn Olaera)* is an employee of petitioner.

JUSTICE CASTANEDA:
Ms. Witness, did you ascertain that, you assumed that she is an employee of petitioner?

MS. MALLORCA:
A. **Yes, your Honor.**

JUSTICE CASTANEDA:
She just assumed that she's an employee.

MS. MALLORCA:
A. **She was at the office of the petitioner, so we presumed that she is an employee of petitioner.**

ATTY. LUGO:
Q. **Aside from the fact that you presumed that Ms. Abera *(Ms. Olaera)* was an employee of petitioner, did you inquire as to her designation or her position in the office?**

MS. MALLORCA:
A. **Due to the bulk of our work, we have to serve so many tax cases so we were not able to asked *(sic)* ID."**[19]

As the Court *En Banc* sees it, what the foregoing testimony merely established was the receipt of the subject PAN by a certain Roselyn Olaera and nothing more. Ms. Mallorca's reliance on the supposed representation of Ms. Olaera, and unfounded assumption that the same is true simply because *"(s)he was the one at the office of the petitioner"*, certainly do not constitute proof of the latter's authority. Tax officials are expected to be vigilant and law-abiding.[20]

Indubitably, the subject PAN was not properly served to respondent.

As regards the service of the Amended PAN and FAN, petitioner argues that Section 3(v), Rule 131 of the Rules of Court provides that a letter duly directed and mailed was received in the regular course of the mail.

The argument is untenable.

In *Republic of the Philippines vs. Court of Appeals, et al.*,[21]

> "...while 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.**" *(Emphasis supplied)*

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[19] Transcript of Stenographic Notes at the hearing held on September 11, 2013 in CTA Case No. 8394, pp. 21 to 23.
[20] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.
[21] G.R. No. L-38540, April 30, 1987.

In this case, petitioner offered in evidence the corresponding registry return receipts to prove the said assessment notices were received by respondent on April 21, 2010.[22] However, mere presentation of the unauthenticated registry return receipts does not constitute proof that the subject assessments were indeed received by respondent.

In *Republic of the Philippines vs. Resins, Incorporated,*[23] the Supreme Court said:

> "xxx. **Receipts for registered letters and return receipts do not prove themselves, <u>they must be properly authenticated in order to serve as proof of receipt of the letters</u>.** 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. <u>Absent one or the other, or worse both, there is no proof of service.</u>**" *(Emphases and underscoring supplied)*

In this case, there is no proof of service because the registry receipts were not properly authenticated. Neither is there any indication that the postmaster issued a certification/affidavit that the subject amended PAN and FAN were delivered to respondent.

Thus, petitioner failed to discharge her burden of proof that the mailed Amended PAN and FAN were indeed received by respondent.

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. **Due process requires that it must be served on and received by the taxpayer.**[24]

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[22] Exhibits "12" and "14", BIR Records, pp. 59 (attached to Exhibit "11") and 63.
[23] G.R. No. 175891, January 12, 2010.
[24] *Commissioner of Internal Revenue vs. Dominador Menguito*, G.R. No. 167560, September 17, 2008.

There being a violation of respondent's right to due process for petitioner's failure to serve upon respondent the subject PAN, Amended PAN and FAN, the Court in Division is correct in ruling that the same are void. Such being the case, the cancellation and setting aside thereof were justified.

Correspondingly, as the assessment and demand are void, the proceedings emanating from them are likewise void, and any order emanating from them could never attain finality.[25] Thus, the Court in Division is likewise correct when it cancelled the subject Warrant of Distraint and/or Levy and the subject Notices of Tax.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated September 17, 2014, and the Resolution dated November 14, 2014, both promulgated by the Court in Division in CTA Case No. 8394 is **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[25] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice