REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SQUARE ONE REALTY CORPORATION,
Respondent.

CTA *EB* NO. 2396
(CTA Case No. 9484)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 23 2022 3:35 pm

x- x

D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) assailing the Decision dated June 30, 2020, and the Resolution dated November 26, 2020, both of the Third (3rd) Division (Court in Division) in CTA Case No. 9484 which cancelled the assessments against Square One Realty Corporation (Square One). The pertinent portions of the Decision and Resolution are quoted below:

Decision dated June 30, 2020:

"In order therefore to prove the fact of mailing, respondent [CIR] must have presented the Registry Receipt issued by the Bureau of Posts or the Registry

[1] EB Docket, pp. 5-28.

Return card which would supposedly be signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed without its intervention, must have been presented to establish the fact of mailing.

In this case, respondent [CIR] did not present the registry receipt issued by the Bureau of Posts, nor the registry return card signed by petitioner's [Square One] authorized representative to prove the fact of mailing and actual receipt of the FAN/FLD by petitioner [Square One].

xxx xxx xxx

Consequently, the deficiency tax assessments against petitioner [Square One] are null and void for having been issued in violation of the due process requirements under Section 228 of the NIRC and RR No. 12-99. And considering there is no valid assessment to begin with, the issuance of the subject FNBS is likewise void and ineffectual.

With the foregoing ruling, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency tax assessment in the total amount of P511,012,039.60, for TY 2012 and the Final Notice Before Seizure, issued against petitioner [Square One], are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."[2]

Resolution dated November 26, 2020:

"...Moreover, the CIR failed to present new matters or arguments which may compel Us to reconsider, modify or reverse the assailed Decision. Hence, We shall no longer belabor in this Relation, to repeat the disquisitions made therein.

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

[2] EB Docket, Decision dated June 30, 2020, pp. 50-51.

SO ORDERED."[3]

THE FACTS

The Court in Division narrated the factual antecedents, as follows:

> Petitioner [now, respondent] is a corporation organized and existing under the laws of the Republic of the Philippines with business address at 1098 Sanciangco Street, Otis, Pandacan, Manila. It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-146-443-000.
>
> Respondent [now, petitioner] is the Commissioner of Internal Revenue who holds office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On December 16, 2013, petitioner received a Letter of Authority No. 034-2013-00000259 dated October 8, 2013, issued by BIR Revenue Region (RR) No. 6, Revenue District No. 034-Paco, authorizing Revenue Officer (RO) Nasser Abinal and Group Supervisor (GS) Manuel Hernandez to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax (DST) and other taxes for the period January 1, 2012 to December 31, 2012.
>
> Thereafter, petitioner received the *Preliminary Assessment Notice* (PAN) on December 17, 2015, issued by Regional Director Araceli L. Francisco, CESO VI of RR No. 6, assessing petitioner for deficiency income tax, VAT, EWT and documentary stamp tax (DST), including increments for TY 2012 in the aggregate amount of P493,416,245.73.
>
> In response to the PAN, petitioner filed a *Reply to the Preliminary Assessment Notice* on January 4, 2016, requesting that the assessments for deficiency income tax, VAT, EWT and DST for TY 2012, be set aside for being devoid of factual and legal bases.
>
> On January 13, 2016, respondent thru Regional Director Araceli L. Francisco, CESO VI, issued the *Formal Letter of Demand* (FLD) with *Assessment Notices* (FAN) and *Details of Discrepancies*, assessing petitioner for deficiency income tax, VAT and EWT including increments for taxable year (TY) 2012 in the aggregate amount of P517,746,664.22, broken down as follows:
>
> xxx xxx xxx

---

[3] EB Docket, Resolution dated November 26, 2022, pp. 56-57.

On August 30, 2016, respondent issued a *Preliminary Collection Letter* (PCL), which was received by petitioner on August 31, 2016, requesting petitioner to pay its tax liabilities in the total amount of P517,746,663.12, broken down as follows:

Assessment/Demand Letter Number	Tax Type	Total
34-12-IT-015-0387	IT	P367,538,166.48
34-12-VT-15-0388	VT	150,206,878.64
34-12-WE-15-0386	WE	1,618.00
Total		P 517,746,663.12

Subsequently, petitioner received on September 15, 2016, the FNBS issued by respondent thru Regional Director Araceli L. Francisco, CESO IV, giving petitioner the last opportunity to make the necessary settlement of its tax liabilities for TY 2012, in the aggregate amount of P511,012,039.60, detailed as follows:

Assessment/Demand Letter Number	Tax Type	Total
34-12-IT-015-0387	IT	P367,538,166.48
34-12-VT-15-0388	VT	143,472,255.12
34-12-WE-15-0386	WE	1,618.00
Total		P 511,012,039.60

On September 26, 2016, petitioner filed a *Reply to the Final Notice Before Seizure* stating that without the FAN being properly served, no proceedings could be initiated for the collection of said deficiency taxes; and praying that the PCL and the FNBS be withdrawn and that the subject assessment be cancelled.[4]

On October 14, 2016, Square One filed its Petition for Review before the 3rd Division. After trial, the 3rd Division rendered the assailed Decision and Resolution, which cancelled the deficiency assessments against Square One.

On January 15, 2021 and within the extended period granted,[5] the CIR filed his Petition for Review.[6] Despite notice,[7] Square One failed to file its comment per Records Verification[8] dated June 28, 2021.

---

[4] EB Docket, Decision dated June 30, 2020, pp. 36-37.
[5] EB Docket, CIR's Motion for Extension of Time to File Petition for Review, pp. 1-3, in relation to Minute Resolution dated January 5, 2021, p. 4.
[6] EB Docket, pp. 5-28.
[7] EB Docket, Resolution dated February 18, 2021, pp. 30-31.
[8] EB Docket, p. 61.

Thus, on July 14, 2021, the instant Petition for Review was submitted for decision.[9]

THE ISSUES

The CIR submits the following grounds for the petition:

"I. WITH ALL DUE RESPECT, THE HONORABLE COURT A QUO HAS NO JURISDICTION OVER THE ORIGINAL PETITION. THE ASSESSMENT AGAINST RESPONDENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

II. ASSUMING THAT THIS IS NOT AN UNDISPUTED ASSESSMENT AND FURTHER ASSUMING THAT THE FINAL NOTICE BEFORE SEIZURE MAY BE THE SUBJECT OF AN APPEAL, STILL THE HONORABLE COURT A QUO HAS NO JURISDICTION OVER THE ORIGINAL PETITION FOR FAILURE ON THE PART OF RESPONDENT TO COMPLY WITH THE JURISDICTIONAL PERIOD TO APPEAL AS PROVIDED FOR IN SECTION 11 OF REPUBLIC ACT NO. 1125 AS AMENDED BY SECTION 9 OF REPUBLIC ACT NO. 9282.

III. THE HONORABLE COURT A QUO ERRED IN REQUIRING PETITIONER TO PROVE ACTUAL RECEIPT OF THE FINAL ASSESSMENT NOTICE/FORMAL LETTER OF DEMAND (FAN/FLD).

IV. THE HONORABLE COURT A QUO ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO THE BENEFIT OF THE PRESUMPTION THAT THE PAN WAS RECEIVED IN THE ORDINARY COURSE OF MAIL."

---

[9] EB Docket, pp. 63-64.

CIR's arguments

The CIR argues that the assessments have become final and unappealable due to Square One's failure to file a valid protest to the FLD/FAN. The CIR insists that the FLD/FAN were duly issued and served to Square One through registered mail at its registered address, as supported by the corresponding Registry Receipt. The CIR maintains that he is entitled to the presumption that the FAN/FLD was received in the ordinary course of mail.

The CIR also argues that following the premise that the instant appeal is on "other matters", the period to appeal had commenced to run from the time Square One received the Preliminary Collection Letter (PCL) on August 31, 2016. Since the Petition for Review before the Court in Division was filed only on October 14, 2016, it was clearly filed beyond the 30-day period from receipt of the PCL, and thus, dismissible.

RULING OF THE COURT

The instant Petition for Review was timely filed.

The CIR received the assailed Resolution dated November 26, 2020, on December 18, 2020.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),[10] the CIR has fifteen days from such receipt, or until January 2, 2021, within which to file his Petition for Review.

On December 29, 2020, the CIR filed his Motion for Extension of Time To File Petition for Review, which was granted in the *Minute Resolution* dated January 5, 2021,

---

[10] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
xxx xxx xxx
(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

giving the CIR until January 17, 2021 within which to file the Petition for Review before the CTA *En Banc*.

Thus, the instant Petition for Review was timely filed on January 15, 2021.

We now proceed to determine the issue of jurisdiction raised by petitioner as this is a primordial consideration before a Court can determine the other issues raised.

Petitioner asserts that the Court has no jurisdiction over the instant case on the ground that the deficiency assessments have become final, executory and demandable for respondent's failure to file a protest within the period prescribed by Section 228 of the National Internal Revenue Code (NIRC), as amended. Petitioner further argues that the Court of Tax Appeals being a court of special jurisdiction, can only take cognizance of disputed assessments citing Section 7 (a) (1) of Republic Act (RA) 1125 as amended by RA 9282.

Alternatively, petitioner contends that even if there is a disputed assessment, the Court still cannot assume jurisdiction because of respondent's failure to comply with the jurisdictional period to appeal from receipt of the Final Notice Before Seizure (FNBS) in accordance with Section 11 of RA 1125 as amended by RA 9282.

We find petitioner's arguments without merit.

Petitioner's attempt to link the allegation of respondent's failure to file a timely protest with the Court's jurisdiction propels us to rule on the other peripheral issues attendant to this case.

Respondent in its Petition for Review with the Court in Division asserts emphatically that it did not receive the FAN/FLD and during the trial presented its witness, Ms. Teresita D. Policarpio, who testified by way of Judicial Affidvit dated April 24, 2017, that respondent did not receive the FAN/FLD dated January 13, 2016 but admitted having received a PCL dated August 30, 2016 mentioning said FAN/FLD. Upon inquiry from the Bureau of Internal Revenue (BIR), witness testified that they were directed to secure a proof of receipt of notice from the Central Post Office of Manila who, in turn, informed the representatives of respondent that said notice was undelivered and that the same was returned to the BIR on January 18, 2016. We quote pertinent portions of the testimony of Ms. Policarpio, to wit:

> "Q22. Prior to the receipt of the Preliminary Collection Letter, was there any other document that was received by SORC, regarding the results of the BIR's investigations?
>
> A. None Sir.
>
> Q22. What about the Assessment Notice dated January 13, 2016 mentioned in the Preliminary Collection Letter?
>
> A. We never received any such Notice from the BIR. In fact, when we went to the BIR to verify proof of actual receipt of such notice by our office, we were instructed to secure the same from the Central Post Office of Manila.
>
> Q24. So what happened after you received this instruction from the BIR?
>
> A. We went to the Central Post Office in Manila to secure a copy of the Certification from the Postmaster on the circumstances of the supposed delivery of BIR's Assessment Notice. True enough the Certification stated that said Notice was undelivered to the petitioner and that it was returned to BIR last January 18, 2016.
>
> Q25. So where is this Certification?
>
> A. Here it is Ma'am."

Respondent was able to secure a Certification from the Postmaster dated September 23, 2016 attesting to the fact that the registered letter supposedly containing the FAN/FLD was not delivered to the addressee and that the same registered letter was returned to the BIR on January 18, 2016. This Certification was offered by respondent as Exhibit "P-9".[11]

Petitioner on his part, presented the following:

---

[11] Division Docket, Volume I, p. 351.

1. Transmittal of FAN/FLD for Mailing dated January 13, 2016;

2. Transmittal Letter of the FAN/FLD dated January 13, 2016, addressed to the Postmaster Central Post Office, dated January 13, 2016;

3. Judicial Affidavit of Benhur Nacorda assigned at the Administrative Division of the BIR and designated as Mailin-I Charge; and

4. Judicial Affidavit of Ma. Paz Arcilla, assigned at the Billing Division of the BIR whose principal duties include the supervision of the preparation, issuance and monitoring of demand letters, final assessment notices and transcripts of assessments of tax cases.

We agree with the Court in Division that the above pieces of evidence failed to satisfactorily prove that the FAN/FLD were actually received by respondent and we quote with approval its assessment on their probative value, thus:

> "The Transmittal letters presented by respondent only prove that the FAN/FLD were forwarded to the Administrative Division and to the Post Office for mailing but do not establish the actual mailing and receipt thereof by petitioner.
>
> Further, the Court cannot give credence to the testimonies of Ma. Paz Arcilla and Benhur C. Nacorda since they were not the ones who actually mailed the FAN/FLD. xxx xxx xxx."

It is well-established that if a taxpayer denies ever receiving an assessment from the BIR, the burden of proof is shifted to the BIR and it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[12]

In the instant case, we adopt the ruling of the Court in Division that petitioner failed to contravene the allegation of

---

[12] *Barcelon Roxas Securities, Inc. vs. CIR*, G.R. No. 157064, August 7, 2006; *CIR vs. Metro Star Superama*, G.R. No. 85371, December 8, 2010; *CIR vs. GJM Phils. Manufacturing*, G.R. No. 202695, February 29, 2016; *CIR vs. T-Shuttle Services, Inc.*, G.R. No. 24079, August 24, 2020.

non-receipt of the FLD/FAN. It is for this reason that the allegation of petitioner that the Court does not have jurisdiction cannot be anchored on the basis of the finality of the FAN/FLD because the same can never become final as this was not proven to be received by respondent. The Supreme Court in the cited case of *CIR vs. GJM Phils. Manufacturing,*[13] stated clearly that "the BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion that no assessment was issued." It then follows that the FAN/FLD which became the basis for the collection efforts of petitioner is void. Such invalidity stems from the fact that there is a violation of the taxpayer's right to due process, particularly that of a taxpayer's right to be informed in writing of the law and the facts on which the assessment is made which is a requirement prescribed in Section 228 of the 1997 NIRC, as amended, quoted as follows:

> "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 pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> 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." (Emphasis supplied

We quote two (2) significant rulings of the Supreme Court related to the provisions of section 228 of the 1997 NIRC, as amended, in the case of *CIR vs. Metro Star Superama,*[14] thus:

> **"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."**

---

[13] Ibid.
[14] Ibid.

> **"The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no valid fruit."** (emphasis supplied)

What then is the basis for the Court to acquire jurisdiction over respondent's Petition for Review in the first instance? This was answered clearly by the Court in Division in the assailed Decision, and we quote:

> "Pertinent to the determination of this Court's jurisdiction over the instant case, Section 7 paragraph (a) (1) of RA 1125, as amended by RA 9282, provides as follows:
>
> Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.** (Emphasis and underscoring supplied)"
>
> Relative thereto, Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA likewise states:
>
> Sec. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **<u>or other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.** (emphasis and underscoring supplied). *om*

> Based on the foregoing, the jurisdiction of the CTA is not limited to decisions of the CIR involving disputed assessments but also includes "other matters" arising under the NIRC or other laws administered by the BIR."
>
> xxx xxx xxx
>
> It is clear from the foregoing that the jurisdiction of the CTA to rule on "other matters arising under the NIRC or other laws administered by the BIR", include those matters which are directly related to the disputed assessments or refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto.
>
> **In the instant case, what is being appealed by petitioner is the validity of the FNBS dated September 15, 2016 issued by respondent, thru Regional Director Araceli L. Francisco, CESO IV, requiring petitioner to settle its tax liabilities for TY2012."** (emphasis supplied)

What is clear from the antecedent facts of this case is that the FLD/FAN was not proven to have been received by the respondent, hence, there being no valid assessment issued, the collection efforts of petitioner such as the issuance of the PCL as well as the FNBS is likewise void. The cancellation therefore of the FNBS is in order.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 30, 2020 and the assailed Resolution dated November 26, 2020, all promulgated by the Third Division of this Court, are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
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

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

am