REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

FAR EAST SEAFOOD, INC.,
Respondent.

CTA EB NO. 2033
(CTA Case No. 8909)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 14 2020 1:05 p.m.

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated October 19, 2018 ("Assailed Decision") and Resolution[2] dated March 04, 2019 ("Assailed Resolution") of the Court of Tax Appeals First Division ("First Division"), cancelling the assessments issued by Petitioner against Respondent for deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), value added tax (VAT), and documentary stamp tax ("DST") for taxable year 2010 in the total amount of Php29,420,114.95.

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1 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. del Rosario and Associate Justice Erlinda P. Uy concurring; Docket, pp. 706-729.

2 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. del Rosario and Associate Justice Erlinda P. Uy concurring; *Id.*, pp. 771-777.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php1,783,418.25, for expanded withholding tax in the amount of Php8,342,577.85, for withholding tax on compensation in the amount of Php2,092,601.57, for value-added tax in the amount of Php16,439,108.43, and for documentary stamp tax in the amount of Php762,408.39 all inclusive of interest, surcharges, and penalties for calendar year 2010 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"[3]

Meanwhile, the dispositive portion of the Assailed Resolution reads:

> "**WHEREFORE**, premises considered, [Petitioner's] "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

The Parties

Petitioner, is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Far East Seafood, Inc. ("FESI"), on the other hand, is a corporation duly organized and existing under the laws of the Philippines which may be served with summons and other legal processes at its principal place of business at Davao Fish Port Complex, Brgy. Lizada, Toril Davao City.[5]

The Facts

The facts as found by the First Division are as follows:

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3 *Id.*, Decision, pp. 728-729.
4 *Id.*, Resolution dated March 04, 2019, p. 777.
5 *Id*, Decision, p. 707.

"On October 11, 2011, [Respondent] received a Letter of Authority (LOA) stating that two tax officers have been authorized to examine [Respondent's] books of accounts for all internal revenue taxes including documentary stamp, for the period 01 January to 31 December 2010.

On September 3, 2012, [Respondent's] received a 15-day Notice for Conference dated August 30, 2012.

On April 15, 2013, [Petitioner] CIR issued a Preliminary Assessment Notice.

Thereafter on June 11, 2013, [Respondent] received a Formal Letter of Demand (FLD) together with the Assessment Notices and Details of Discrepancy.

[Respondent] filed its protest on July 11, 2013 to the OIC Regional Director for Revenue Region No. 19. In its protest, [Respondent] argued that the assessments were results of an invalid letter of authority; the formal letter of demand was issued without a preliminary assessment notice; and that assessed year 2010 was covered by income tax holiday.

However, on September 11, 2014, [Respondent] received a letter from [Petitioner] through the OIC Regional Director for Revenue Region No. 19, denying the protest. Thus, on October 13, 2014, [Respondent] filed this petition."[6]

The Ruling of the First Division

On October 19, 2018, the First Division promulgated the Assailed Decision granting the Petition for Review filed by herein Respondent. According to the Decision, Petitioner failed to satisfactorily discharge its burden of proving that he was able to strictly comply with the requirements set forth under Section 228 of the NIRC of 1997, as amended, and Revenue Regulations ("RR") No. 12-99 in serving the Preliminary Assessment Notice ("PAN"). For failure to prove the sending of the PAN stating the facts and the law on which the assessment was made as required under the law, the assessments made by Petitioner are void.

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6 *Id.*, pp. 707-708.

Aggrieved, Petitioner filed a "Motion for Reconsideration (Re: Decision promulgated on 19 October 2018)"[7] on November 13, 2018, which the First Division denied in the Assailed Resolution. In denying Petitioner's motion, the court *a quo* found no substantial argument was raised to merit reconsideration of the Assailed Decision.

The Proceedings in the Court of Tax Appeals En Banc

On March 22, 2019, Petitioner filed a "Motion for Extension of Time to File Petition for Review"[8], which the Court granted in a Minute Resolution dated March 25, 2019.[9]

On April 08, 2019, Petitioner filed the present "Petition for Review"[10].

On May 06, 2019, the Court issued a Resolution[11] ordering Respondent to comment on the Petition for Review.

On June 27, 2019, Respondent filed a "Motion for Extension of Time to Submit Comment (With Offer of Profuse Apologies)"[12] praying for an additional ten (10) days from June 28, 2019 or until July 08, 2019 to file a comment, which the Court granted in a Minute Resolution dated July 01, 2019.[13]

On July 08, 2019, Respondent filed a "Motion for Leave to File Comment"[14] with attached "Comment (To the Petition for Review)"[15] ("Comment").

On July 17, 2019, the Court issued a Resolution:[16] (a) granting Respondent's "Motion for Leave to File Comment", (b) noting Respondent's Comment, (c) giving due course to the "Petition for Review", and (d) requiring the parties to submit their memoranda within thirty (30) days from receipt.

Petitioner and Respondent filed their respective Memorandum[17] on August 07, 2019 and September 27, 2019.

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7 *Id.*, pp. 731-744.
8 Rollo, pp. 1-4. Record shows that Petitioner received the March 04, 2019 Resolution on March 08, 2019; Docket, p. 770.
9 *Id.*, p. 5.
10 *Id.*, pp. 6-25.
11 *Id.*, pp. 58-59.
12 *Id.*, pp. 60-63.
13 *Id.*, p. 64.
14 *Id.*, pp. 65-66.
15 *Id.*, pp. 67-82.
16 *Id.*, pp. 132-134.
17 *Id.*, pp. 135-149, 150-169.

On October 23, 2019, the Court issued a Resolution[18] submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1) The honorable Court First Division erred in requiring Petitioner to prove actual receipt of the PAN; and

2) The honorable Court First Division 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.[19]

The Arguments of Parties

Petitioner mainly avers that it was able to prove that the PAN was served by registered mail, based on the evidence presented. According to Petitioner, Respondent is estopped from denying receipt of the PAN since all notices issued to Respondent were serve directly to its registered address, and Respondent acknowledged receipt of all the notices, save for the PAN.

Petitioner also adds that it was able to prove the facts to raise the presumption laid down in *Protector's Services Inc. v. Court of Appeals*[20] ("*Protector's Services*"). He has sufficiently proven by sufficient documentary evidence the registry return receipt and the testimony of Revenue Officer Marilou E. Cubero that Respondent received the PAN in the ordinary course of mail.

Furthermore, Petitioner submits that bare denial by Respondent without competent proof does not contradict the disputable presumption laid down in Section 3 of Rule 131 of the Rules of Court.

Lastly, Petitioner contends that Respondent was always accorded due process from the time the required documents for audit was communicated to Petitioner until the Formal Letter of Demand ("FLD") was issued. Respondent was constantly appraised of the audit findings which lead to the deficiency assessment.

On the other hand, Respondent in its Comment counters that the Petition for Review must fail for a number of reasons. *First*, Petitioner presented thirty-nine (39) paragraphs of arguments that are the exact same

[18] *Id.*, pp. 171-172.
[19] *Id.*, pp. 7-8.
[20] G.R. No. 118176, April 12, 2000.

thirty-nine (39) paragraphs of arguments posed when he moved for reconsideration of the Decision issued by the First Division. *Second*, Petitioner presented a witness who reinforces rather than bulldozes Respondent's categorical and repeated statement that it has not received a PAN. *Third*, Petitioner's reliance in the cases of *Protector's Services, Robert P. Wa-Acon v. People of the Philippines*[21] and *Anuncio C. Bustillo, et al. v. People of the Philippines*[22] is misplaced. *Fourth*, the First Division's appreciation of the principle laid down in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[23] is not erroneous. *Fifth*, there was no valid Letter of Authority. *Lastly*, the deficiency taxes assessed are without legal bases.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the March 04, 2019 Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision promulgated on 19 October 2018)", on March 04, 2019. Petitioner received said Resolution on March 08, 2019. Pursuant to Rule 4, Section 2(a)(1)[24] in relation to Rule 8, Section 3(b)[25] of the Revised Rules of the Court of Tax Appeals[26] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until March 23, 2019 within which to file his petition for review.

On March 22, 2019, Petitioner timely filed a "Motion for Extension of Time to File Petition for Review", praying for an extension of fifteen (15) days or until April 07, 2019 within which to file the petition for review. The Court granted the same in a Minute Resolution dated March 25, 2019.

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[21] G.R. No. 164575, December 06, 2006.

[22] G.R. No. 160718, May 12, 2010.

[23] G.R. No. 157064, August 07, 2006.

[24] **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 Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[25] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[26] A.M. No. 05-11-07-CTA, November 22, 2005.

On April 08, 2019, Petitioner timely filed the present "Petition for Review".[27] Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

For violating Respondent's right to due process, the subject assessment is void

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a reproduction of the "Motion for Reconsideration (Re: Decision promulgated on 19 October 2018)"[28] filed by Petitioner on November 13, 2018 before the First Division, the arguments of which had been fully and exhaustively resolved by the Court in Division in the Assailed Resolution. Be that as it may, and if only to put Petitioner's mind to rest and for purposes of emphasis, the Court *En Banc* will discuss them anew.

The requirement of informing the taxpayer of the assessment is **mandatory** in nature as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99, the pertinent portions of which are quoted hereunder for ready reference:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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27 April 07, 2019 fell on a Sunday.
28 Docket, pp. 731-744.

> 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.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."[29]
>
> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

Section 228 of the NIRC of 1997, as amended, provides that taxpayers must be informed of the facts and the law upon which the assessment was made; otherwise, **the assessment will be void.**

[29] *Emphasis supplied.*

Furthermore, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the PAN by respondent and the receipt thereof by the taxpayer as part of due process in the issuance of assessments.

In the instant case, the PAN was allegedly sent to Respondent through registered mail. However, receipt thereof by Respondent was not established. Much more, it was denied by Respondent. Note that the fact of mailing is not synonymous to receipt.

After a careful scrutiny of the records, the Court finds that there was no valid service of the PAN to Respondent in this case.

Let it be stressed that it is imperative for Petitioner to satisfactorily prove the release, mailing or sending of the assessment. This was the pronouncement of the Supreme Court in the case of *Barcelon, Roxas Securities Inc. v. Commissioner of Internal Revenue*[30], citing the case of *Nava v. Commissioner of Internal Revenue*[31], the pertinent portion of which reads:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, **this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice**; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense."[32]

It must be noted that Section 3(v) of Rule 131 of the 1997 Rules of Civil Procedure provides that "a letter duly directed and mailed is deemed received in the regular course of the mail".

However, the facts to be proved to raise this presumption are (a) **that the letter was properly addressed with postage prepaid**, and (b) **that it was mailed**. Once these facts are proven, 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.[33]

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[30] G.R. No. 157064, August 7, 2006.
[31] G.R. No. L-19470, January 30, 1965.
[32] *Emphasis supplied.*
[33] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 157064 August 7, 2006.

On this matter, Petitioner's witness, Marilou E. Cubero, Revenue Officer ("RO") III of the Assessment Division, BIR Revenue Region No. 19 Davao City, testified that their office, the Assessment Division, issued to Respondent the PAN with attached Details of Discrepancy and that they sent the same to the Administrative Division for mailing to Respondent.[34] As proof thereof, Petitioner presented a Registry Return Receipt[35] indicating a date stamp of "Apr 15, 2013" and a postmark of "APR 30 2013".

However, it must be noted that RO Marilou E. Cubero has no personal knowledge on whether the subject mail matter under Registry Return Receipt marked as Exhibit "R-8" is indeed the PAN or whether said PAN was mailed or actually delivered to the addressee or the latter's duly authorized representative, since she merely sent said PAN to the Administrative Office who, in turn, will deliver said notice to the Post Office for mailing. The pertinent portion of the Transcript of Stenographic Notes of the testimony of RO Marilou E. Cubero on Cross-Examination and Re-Direct Examination reads:

> ATTY. EDLES:
>
> Q. Thank you. You said earlier that you served these notices, the FLN, FAN and the PAN through registered mail.
>
> MS. CUBERO:
>
> A. Yes, Your Honors.
>
> ATTY. EDLES:
>
> Q. Did you personally administer the sending by registered mail?
>
> MS. CUBERO:
>
> A. The Administrative office, You Honors, because from the Assessment Division, we will be sending our closed envelopes to the Administrative Division, and they made a recording there, in case, because that is an important document for us, Your Honors, so, everything should be mailed through our Administrative Office.

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[34] Docket, Judicial Affidavit of Revenue Officer Marilou E. Cubero and Notice of Hearing dated October 11, 2016, pp. 128-134 and 602-606.

[35] *Id.*, Exhibit "R-8", p. 137.

ATTY. EDLES:

Q. But the actual service of these notices, you don't have personal knowledge?

MS. CUBERO:

A. It's the post office. I don't have any personal knowledge because it's . . . (interrupted) (p. 27-28, TSN dated October 11, 2016)

xxx xxx xxx

JUSTICE DEL ROSARIO:

Ms. Cubero, kindly clarify your service of the Preliminary Assessment Notice to the petitioner. You alleged that the Preliminary Assessment Notice was actually served by registered mail. Is it not?

MS. CUBERO:

B. Yes, Your Honors.

JUSTICE DEL ROSARIO:

Q. Did you personally cause the mailing of the Preliminary Assessment Notice? Are you the one who went to the Postal Office to cause the mailing?

MS. CUBERO:

A. No, Your Honors.

JUSTICE DEL ROSARIO:

Q. You did not try to coordinate or talk to the person who did the mailing addressed to the petitioner?

MS. CUBERO:

A. It's the work of our Administrative Office. All that we do is to wait. They have also delivered. The Administrative Office will deliver to us the return receipt, in case, *wala, babalik kami sa kanila.* That's the time we will go to them.

JUSTICE DEL ROSARIO:

Q. Yes, so, in other words, you did not even require the person who caused the mailing to execute an affidavit insofar as the mailing is concerned. You never did require him to execute an affidavit?

MS. CUBERO:

A. No, Your Honors.

JUSTICE DEL ROSARIO:

Q. So, that you would have something to hold on that the mail matter has been actually been set out?

MS. CUBERO:

A. But we can get a copy or extract a copy from our administrative office.

JUSTICE DEL ROSARIO:

Q. Yes. But as of date, you never approached him to execute an affidavit to that effect?

MS. CUBERO:

A. I just asked them, the Administrative Officer, then, he told us that it was actually made, and in fact, the registry return receipt was given to our office, the Assessment Division and we properly logged in the logbook in our office. '*Yun lang.* (p. 30-32, TSN dated October 11, 2016)

Thus, given the Registry Return Receipt and the testimony of RO Marilou E. Cubero, Petitioner is not entitled to the presumption that the letter was received by the taxpayer, Respondent in this case, as soon as it could have been transmitted to him in the ordinary course of the mail.

Nevertheless, *assuming that* Petitioner was able to establish the said presumption, the same is merely a disputable presumption.

In the case of *Republic of the Philippines v. The Court of Appeals and Nielson & Co., Inc.*[36] and in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[37], the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

Respondent denied receiving the PAN in its "Petition for Review"[38] filed before the court in Division. Respondent's denial of the receipt of the PAN was also mentioned in its Protest[39] to the Formal Letter of Demand ("FLD") dated July 11, 2013 in response to the FLD issued against it, stating that apart from a Letter of Authority issued in October 2011 and the 15-Day Notice for Conference issued in September 2012, it received no other notice from the BIR before receipt of the said FLD.

Since there is a direct denial of the receipt of the PAN, the said denial shifts the burden upon Petitioner to prove that the mailed PAN was indeed received by Respondent. However, a scrutiny of the pieces of evidence presented by Petitioner reveals that the same are insufficient to prove that the PAN was indeed received by Respondent in accordance with law and pertinent jurisprudence.

In this case, a perusal of the Registry Return Receipt shows a signature as proof that a person received the letter, a certain "SG Barrientos". However, Petitioner failed to show that said person was authorized by Respondent to receive BIR notices on behalf of Respondent. At the very least, Petitioner should have presented his relation of confidence or connection with Respondent in order to say that he is an authorized representative of Respondent.

The requirement that the PAN should be served on the addressee or a duly authorized agent of the addressee was also mentioned by this Court in the case of *People v. Typingco*[40], as follows:

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[36] G.R. No. L-38540, April 30, 1987.
[37] G.R. No. 157064, August 07, 2006.
[38] Docket, pp. 6-23.
[39] *Id.*, Exhibit "P-11", pp. 389-394.
[40] CTA Crim. Case No. O-114, May 16, 2012.

> "Jurisprudence likewise dictates that for notice by mail, it must appear that **the same was served on the addressee or a duly authorized agent of the addressee**. In fact, the registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.' Also, it is a rule that 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.
>
> Again, the prosecution failed to demonstrate that the registry receipt had been actually served upon the accused or upon his duly authorized agent. The bare testimony of Teresita Maglunog, the BIR document locator and the registry receipt are utterly insufficient to prove that the assessment notices and demand letters were received by the accused. Such failure of the prosecution is a fatal blow to its case."[41]

Furthermore, what is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative.[42]

Time and again, the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

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

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41 *Emphasis supplied.*

42 *Barcelon, Roxas Securities Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 07, 2006.

> that it must be served on and received by the taxpayer."[43]

Considering that Petitioner failed to discharge the burden of proving that the PAN was actually received by Respondent or its duly authorized agent, the PAN is deemed to have not been issued by Petitioner.

Thus, for failure of Petitioner to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of PAN as strictly required under the NIRC of 1997, as amended, this Court holds that the subject assessment is void and of no legal effect.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on April 08, 2019 is **DENIED** for lack of merit. Accordingly, the October 19, 2018 Decision and March 04, 2019 Resolution in CTA Case No. 8909 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[43] *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue,* G.R. No. 155541, January 27, 2004.

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