REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1606 (CTA CASE No. 8617)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
G&W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS CO., *Respondent.*	Promulgated: DEC 14 2018 2:58 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution of this Court En Banc is the Commissioner of Internal Revenue's (CIR) Motion for Reconsideration (Re: Decision promulgated on January 25, 2018 [sic]) seeking for the reversal of the Decision promulgated on July 25, 2018, the dispositive portion of which reads as follows:

Decision dated July 25, 2018:

> "**WHEREFORE**, the petition is **DENIED**. The Decision of the Third Division of this Court in CTA Case No. 8617 dated November 8, 2016, and its Resolution dated February 17, 2017, are **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED**."

In the instant motion, the CIR insists that the assessments have become final, executory and unappealable for failure of respondent to file a valid protest from receipt of the Assessment notices.

The Court En Banc finds the motion bereft of merit. There is no compelling reason to reverse or modify the assailed Decision. The issues raised herein have already been exhaustively addressed. Nonetheless, the Court still deems it appropriate to pass upon the arguments.

Again, the crux of the controversy is the **alleged receipt** of the assessment notices by respondent which the latter denies wailing deprivation of due process on their part rendering the said notices invalid.

The failure of petitioner to prove receipt of the assessment by the respondents lead to the conclusion that no assessment was issued. Thus, petitioner cannot say that respondents were accorded due process, because **no effective protest can be made.**

The assailed Decision extensively discussed the significance and indispensability of affording taxpayers sufficient written notice of their liability is a clear definite requirement[1]. Thus, we reiterate our ruling:

> "It bears emphasis that under Section 228 of the NIRC, a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. In implementing Section 228 of the NIRC, RR No. 12-99 reiterates the requirement that a taxpayer must be informed in writing of the law and the facts on which his tax liability was based, to wit:
>
> > "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
> >
> > xxx xxx xxx
> >
> > 3.1.2 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

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[1] Commissioner of Internal Revenue v. Liquigaz Philippines Corp., G.R. Nos. 215534 & 215557,April 18,2016.

> assess the taxpayer for any deficiency tax or taxes, **<u>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 law, rules and regulations, or jurisprudence on which the proposed assessment is based</u>** xxx 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.
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> xxx xxx xxx"

At the outset, **<u>elementary is the rule that a taxpayer must actually receive any assessment issued by the CIR for it to be valid</u>**. Guided by the provisions above, the Court in Division ruled that respondent was not accorded due process because of the fact that the assessment was not actually received by the taxpayer despite constructive service done by the BIR. However, the BIR begs to disagree and insists that since RR 12-99 allows service of assessment by registered mail, the essence of constructive receipt is that the taxpayer will not actually receive the assessment and such assessment is valid.

We submit that the Rules of Court and RR 12-99 provide that sending of notices by registered mail and failure to respond by the taxpayer shall be considered as actual or constructive receipt by him, to wit:

> "Sec. 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted/ but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail;"

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Relative thereto, Section 3.1.7 of RR No. 12-99 provides as follows:

"3.1.7 Constructive Service. - If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case.

From the foregoing, it is clear that sending of notices by registered mail is sufficient compliance under the law. **However, the rules are also clear 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**."

It is clear that the presumption in favor of receipt of mail by the addressee can be disputed and overturned by sufficient evidence to the contrary by the party against whom the presumption is made. If this occurs, the party who enjoys the presumption must prove that the mailed letter was indeed received by the addressee.

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It was therefore incumbent upon petitioner to prove that the mailed assessment notices were indeed received by respondent, or at the very least, by its authorized representative. Regrettably, petitioner failed to do so.

The presentation of the Registry Return Receipts is not sufficient to prove that respondent actually received the PAN and FAN. It must be signed by the addressee or the recipient and must be authenticated to establish that the person who signed the Registry Return Receipt was the duly authorized representative of respondent.

In the instant case, the witness of petitioner failed to identify and authenticate the signatures appearing on Registry Return Receipts, moreover, it cannot be said with certainty that the signatures appearing in the said documents were those of respondent's authorized representatives.

It bears emphasis that Registry Return Receipts must be authenticated to serve as proof of receipt of letters sent through registered mail.[2] The ruling of the Supreme Court on the matter in the case of *Ting vs. Court of Appeals*[3] is instructive, to wit:

> "Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. **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.**
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> Likewise, 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]

[2] Suarez vs. People, G.R. No. 172573, June 19, 2008.
[3] Ting vs. Court of Appeals, G.R. No. 140665, November 13, 2000.

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> 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.
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> In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. **All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery.** From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. (Boldfacing supplied)

Even for the sake of argument that the PAN and FAN were properly and duly served upon and received by respondent, the deficiency IT and VAT assessments issued against respondent for taxable year 2006 are still VOID.

A final assessment is defined as **a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."[4] This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies."**[5] Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.

As correctly pointed out by Presiding Justice Roman G. Del Rosario in his Concurring Opinion, records reveal that the FAN and Assessment Notices received by the respondents specifically failed to demand payment of the taxes due within a specific period. To reiterate:

> "A perusal of the FAN and the Assessment Notices enclosed thereto issued against respondent reveals that both failed to demand payment of the

[4] Commissioner of Internal Revenue v. Menguito, G.R. No. 167560, September 17, 2008.
[5] Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999.

taxes due within a specific period. While the FAN incorporates the following statement:

> 'x x x, it is requested that you pay the above deficiency taxes, through the duly authorized agent bank (AAB) which you are enrolled, within the same time shown in the accompanying assessment notice.'

The spaces, for the **due dates in the Assessment Notices were conspicuously left blank**.

Since there was no assessment notice which properly indicated the due date when the deficiency taxes must be paid, no proper demand thereof within a specific period was made.

xxx xxx xxx

In other words, **a FAN must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period. Absent such demand, as in this case, the FAN and Assessment Notices are fatally infirm**"

In a more recent case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.,*[6] the Supreme Court is instructive on this part:

"**The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes**. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects." **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed**. Its main purpose is to

[6]Commissioner of Internal Revenue vs. Fitness By Design, Inc, G.R. No. 215957, November 9, 2016.

determine the amount that a taxpayer is liable to pay."

Therefore, for lack of a definite and categorical demand for payment of the assessed amount on or within a date certain rendering the FAN and the Assessment Notices legally infirm. Consequently, the Court is left with no other recourse but to invalidate the same.

WHEREFORE, finding no cogent reason to reverse the Decision dated July 25, 2018, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice