Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1447** (CTA Case No. 8548)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA RINGPIS-LIBAN, and MANAHAN,JJ.
ARTDEPOT, INC., Respondent.	Promulgated: MAR 29 2017 3:09 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated January 6, 2016, rendered by the Third Division of this

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[1] 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;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 28-43.

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Court in CTA Case No. 8548, and its Resolution[3] dated March 23, 2016. Petitioner insists that respondent's right to due process was not violated.

Petitioner Commissioner of Internal Revenue (CIR) assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated January 6, 2016:

> *"**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Artdepot, Inc. is hereby **GRANTED.** The Preliminary Assessment Notice, the Formal Letter of Demand dated October 29, 2010, and the Assessment Notices for deficiency income tax, value-added tax, and expanded withholding tax all dated October 29, 2010, are declared NULL and VOID. Accordingly, the Warrant of Distraint and/or Levy for the amount of P4,801,723.69 is CANCELLED and WITHDRAWN.*
>
> ***SO ORDERED."***

Resolution dated March 23, 2016:

> *"**WHEREFORE**, the Motion for Reconsideration dated January 2, 2016 filed by respondent is hereby **DENIED** for lack of merit.*
>
> ***SO ORDERED."***

The pertinent facts as narrated by this Court in Division in its Decision read as follows:

> *"Petitioner[4] Artdepot, Inc. is a registered taxpayer with Tax Identification Number (TIN) 234-392-120-000. It is located at No. 80 Apo, Barangka Ilaya, Mandaluyong, Metro Manila.*
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> *Respondent[5] is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to decide disputed*

[3] En banc Docket, pp. 45-49.
[4] Artdepot, Inc. was the petitioner before the Court in Division and thereafter the petitioner before this Court en banc.
[5] Commissioner of Internal Revenue (CIR) was the respondent before the Court in Division and thereafter the petitioner before this Court en banc.

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assessments and cancel tax liabilities, pursuant to the National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 29, 2009, respondent, through Regional Director Antonio F. Montemayor, issued a Letter of Authority (LOA) No. 2008-00010862 dated June 23, 2009, authorizing Revenue Officer (RO) Danny P. Rodrigo and Group Supervisor Enrique G. Del Rosario, both of Revenue District Office (RDO) No. 41, Mandaluyong City, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period covering January 1, 2008 to December 31, 2008.

Pursuant to the said LOA, respondent issued and petitioner received a Second Request for Presentation of Books and Other Accounting Records for taxable year 2007. A similar request in the Final Notice dated August 10, 2009 followed but this time for taxable year 2008. The same request was indicated in the subpoena duces tecum dated October 20, 2009, also for taxable year 2008.

For alleged failure to produce the requested records and books of account for taxable year 2008 in violation of Section 266, in relation to Sections 253 and 256 of the NIRC, as amended, respondent filed a criminal complaint dated November 18, 2009 against, petitioner's Vice President for Finance, Ma. Cecilia P. Abes.

Subsequently, an undated Preliminary Assessment Notice (PAN) was issued to petitioner for alleged deficiency IT, VAT, and EWT plus compromise penalty. Petitioner filed a protest letter to the PAN addressed to the Assessment Division of BIR Revenue Region No. 7.

In a letter dated June 27, 2011, respondent informed petitioner that a Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) has been issued against it for taxable year 2007. This was followed by a Collection Letter dated April 23, 2012, covering internal revenue tax liabilities for taxable year 2007. In response thereto, petitioner sent a letter to respondent dated May 3, 2012.

Later, a Final Notice Before Seizure was served upon petitioner for its alleged deficiency taxes for the year 2008.

On August 29, 2012, petitioner received a Warrant of Distraint and/or Levy for the said deficiency taxes.

> *On September 28, 2012, petitioner filed the instant Petition for Review.*
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> *On November 21, 2012, respondent filed her Answer, interposing the general defense that tax assessments by tax examiners are presumed correct unless proven otherwise, that through the final notice and demand letter with details of discrepancies sent to it, petitioner was fully apprised of the facts and the law upon which the assessment was based. More importantly, the subject assessment has become final and executory since petitioner failed to timely protest the same. Petitioner admitted having received the June 27, 2011 letter informing it of the issuance of the FAN but failed to verify such information until the issuance of the Collection Letter dated April 23, 2012.*
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> *On May 31, 2013, the parties, after the termination of the Pre-trial Conference, filed their Joint Stipulation of Facts and Issues (JSFI).*

Thereafter trial ensued, the parties presented their respective witnesses and evidences. On January 27, 2015, the case was submitted for decision.

On January 6, 2016, this Court in Division rendered the subject Decision, granted respondent corporation's petition and cancelled the Warrant of Distraint and Levy for the amount of Php 4,801,723.69.

CIR filed a Motion for Reconsideration. Said motion was denied for lack of merit. Hence, the present petition was filed.

Petitioner raised the following issues:

I.

THE PETITIONER VALIDLY ISSUED AND SERVED THE 2008 NOTICE FOR INFORMAL CONFERENCE, PRELIMINARY ASSESSMENT NOTICE AND FINAL ASSESSMENT NOTICE TO RESPONDENT.

II.

THE RESPONDENT WAS AFFORDED ITS RIGHT TO DUE PROCESS.

Petitioner argued that the 2008 Notice for Informal Conference, Preliminary Assessment Notice and Final Assessment Notice were validly issued to respondent and that respondent was afforded its right to due process. Petitioner maintains that the Certification of the Philippine Postal Service Corporation which was not admitted for being not marked, identified and formally offered in evidence prove the fact of service and receipt of the Final Assessment Notice and Demand Letter. In sum, the issues raised in this petition are similar to the issues and arguments raised before this Court's Division.

We resolve to deny the petition.

In the case of *CIR vs. GJM Philippines Manufacturing, Inc.*[6], the Supreme Court explained the necessity for the CIR to prove by competent evidence that FAN was indeed received by the taxpayer, to wit:

> *"If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the onus probandi has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.*
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> *To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by*

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[6] G. R. No. 202695, February 29, 2016.

> *substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices."*

In this case, petitioner wants this Court to consider the Certification of the Philippine Postal Service Corporation to prove the fact of service and receipt of the Final Assessment Notice and Demand Letter, however, said evidence was not admitted for being not marked, identified and formally offered in evidence.

The courts cannot consider evidence which has not been formally offered.[7] Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.[8] Neither can this Court take an exception. In *Oñate vs. Court of Appeals*[9], the Supreme Court relaxed the rule and allowed evidence, not formally offered, to be considered on condition that: (1) evidence must have been identified by testimony duly recorded and (2) it must have been incorporated in the records of the case.

Furthermore, even if the Certification of the Philippine Postal Service Corporation is formally offered and admitted, the fact remains that petitioner failed to prove that respondent received the FAN. Certifications may have proven the fact of mailing via registered mail no. 1835, but, petitioner has no evidence to prove that Security Guard H. Pacelo, who received the registered mail No. 1835, was duly authorized by respondent to receive the same in its behalf.

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[7] RULES OF COURT, Rule 132, Sec. 34.
[8] Far East Bank and Trust Company vs. CIR, G.R. No. 149589, September 15, 2006.
[9] G. R. No. 116149, November 23, 1995, citing *People vs Napat-a,* 179 SCRA 403 [1989] and People v. Mate, 103 SCRA 484 [1981]

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After taking a second hard look of the records in this case, we find that petitioner failed to present well-founded explanation for the belated presentation of evidence, thus, this Court in Division did not err when it ruled as follows:

> *"As to the Certification attached to respondent's Motion for Reconsideration, the same is simply inadmissible in evidence on the ground that a motion for reconsideration cannot be used as a vehicle to introduce new evidence, otherwise the opposing party will be deprived of the right to examine it and object to its admissibility. Further, the said certification has not been authenticated. It is also at best a forgotten evidence as respondent was unable to explain its belated presentation, that is after the unfavorable judgment.*
>
> *Further, there is no indication in the Certification of what was received or that the Security Guard who received the Registered Letter No. 1835 was authorized to do so by petitioner.*
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> *As to the lists of names of taxpayers prepared by the Chief of the Billing Section of the Bureau of Internal Revenue which respondent also attached to her motion, suffice it to say that they do not prove receipt by petitioner of the subject PAN or FAN/FLD from respondent.*
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> *More importantly, the alleged new evidence attached to the Motion for Reconsideration cannot be given evidentiary value for they were not marked, identified and formally offered in evidence.*
>
> *Finally, even assuming that petitioner was served with the FAN and FLD on July 7, 2011, the right of respondent to assess for the year 2007 has prescribed pursuant to Section 203 of the National Internal Revenue Code (NIRC), as amended, since the assessment for deficiency IT was only valid until April 15, 2011, for VAT, only until January 25, 2011, and for EWT, only until January 14, 2011.*
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> *xxx xxx xxx*
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> *As to the Certification dated November 22, 2012 from the Mandaluyong Central Post Office attached to the Motion for Reconsideration, the same will not save the day for respondent. It was neither identified by a competent witness nor was it formally offered in evidence and admitted for the appreciation of the Court. Basic is the rule that no evidence shall be admitted unless formally offered.*

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And the Court shall consider no evidence which has not been formally offered.

The said Certification is also insufficient proof of receipt by petitioner of the FLD. It reads, thus: "This is to certify that registered letter no. 1835 addressed Artdepot, Inc. of #80 Apo St., Mandaluyong City was delivered to and received by Security Guard H. Pacelo on November 4, 2012 per advise of Letter Carrier Jovito N. Palacio."

Note that what was received was a "registered letter no. 1835." There was nothing in the said certification saying that "registered letter no. 1835" was the FLD issued against petitioner. Beyond this disturbing fact, there was no proof that Security Guard H. Pacelo was duly authorized to receive such important communication from the BIR as the assessment notices which could adversely affect petitioner's operation and financial condition."[10]

Based on the foregoing, petitioner failed to satisfactorily discharge its burden of proving that requirements set forth under Section 228 of the NIRC of 1997[11] and RR No. 12-99[12] in serving the FAN/FLD were

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[10] En banc Docket, pp. 45-49.

[11] 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:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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.

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

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strictly complied with. The stringent requirement that an assessment notice be satisfactorily proven to have been issued and released or, if receipt thereof is denied, that said assessment notice has been served on the taxpayer, applies heavily on the petitioner. 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.[13]

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and it is consistent with prevailing law and jurisprudence.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated January 6, 2016, rendered by the Third Division of this Court in CTA Case No. 8548, and its Resolution dated March 23, 2016. are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied).

[12] Implements the provisions of the National Internal Revenue Code of 1997 governing the rules on assessment of national internal revenue taxes, fees and charges

[13] CIR vs.. Menguito G.R. No. 167560, September 17, 2008, 461 SCRA 565.

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1447** (CTA Case No. 8548)
	Present:
-versus-	**DEL ROSARIO**, *PJ,* **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
	Promulgated:
ARTDEPOT, INC., *Respondent.*	MAR 29 2017 3:09 p.m.

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CONCURRING OPINION

DEL ROSARIO, PJ.,:

I concur in the denial of the Petition for Review.

I would like to stress that the admissibility or inadmissibility of the Certification dated November 22, 2012, signed by Rufino C. Robles, Postmaster and Jovito N. Palacio, Letter Carrier, of Philippine Postal Corporation, Mandaluyong Office, which is attached to petitioner's Motion for Reconsideration of the assailed Decision of the Court in Division, is insignificant to petitioner's cause, particularly - - with respect to his claim that the Final Assessment Notice (FAN) assessing respondent for deficiency taxes for **taxable year 2008** was actually delivered to and received by respondent.

Undeniably, the **Certification confirms the delivery of registered letter no. 1835 (Exhibit "P-9")** [1] to Artdepot, Inc.'s address in Mandaluyong City. A review of the records, however, would show **that registered letter no. 1835 pertains to FAN for taxable year 2007 (Exhibit "P-8")** [2] **while the present case involves the assessment and collection of deficiency taxes for taxable year 2008**. No other competent evidence exists showing that the FAN for taxable year 2008 was indeed delivered to and received by respondent.

In *Commissioner of Internal Revenue vs. Azucena T. Reyes*,[3] the Supreme Court declared that **if there is no valid notice sent, the assessment is void**, and the reason is that 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 absence of a valid FAN, there is no basis for petitioner to issue the Warrant of Distraint and/or Levy for the collection of alleged deficiency taxes for the year 2008.

In fine, I VOTE to deny the Petition for Review filed by petitioner Commissioner of Internal Revenue for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] En Banc Docket, p. 67.
[2] En Banc Docket, p. 66.
[3] G.R. Nos. 159694 and 163581, January 27, 2006.