REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ASIA INTERNATIONAL AUCTIONEERS, INC.,
Petitioner,

C.T.A. CASE NO. 7270

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 20 2006, 4:10 PM

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RESOLUTION

For resolution are the following:

1. Respondent's **"Motion to Dismiss"** for lack of jurisdiction filed on March 8, 2006;

2. Petitioner's **"Comment/Objection (to Respondent's Motion to Dismiss)"** filed on April 6, 2006; and

3. Respondent's **"Reply (Re: Comment/Objection to Respondent's Motion to Dismiss)"** filed on April 21, 2006.

On June 13, 2006, this Court issued a Resolution holding in abeyance the resolution of respondent's Motion to Dismiss until petitioner has submitted its evidence in support of its claim that a timely protest letter was filed through registered mail. Accordingly, petitioner was ordered to submit the originals or certified true copies of its alleged Letter Protest dated August 29, 2004; the corresponding registry receipt and return card; the Certification of the Philippine Postal Corporation of Olongapo City; and the Summary of the Records Division of the BIR.

On August 7, 2006, petitioner submitted the following documents in compliance with this Court's Resolution of June 13, 2006, to wit:

1. **Original Copy** of a protest letter[1] dated August 29, 2004 with original registry receipt[2] stamped August 30, 2004;

2. **Original Certification** issued by Postman III, Wilfredo R. de Guzman[3];

3. **Original Certification** issued by the Acting Postmaster of the BIR Post Office, Josefina M. Hora, dated July 5, 2006[4]; and

4. **Certified Photo Copy** of the Records Division's "Receipt of Important Communication Delivered[5]".

During the hearing on August 18, 2006, petitioner presented as witnesses, Ms. Josefina Hora, Ms. Felisa Arrojado, and Mr. Jose Resngit, to testify on the due execution of their above-mentioned Certificates.

It is respondent's submission that the subject assessment has become final, executory and demandable for failure of petitioner to protest the same within the reglementary period allowed under Section 228 of the National Internal Revenue Code of 1997. Respondent maintains that the only protest letter filed by petitioner is the one dated September 24, 2004 and its records are wanting of the alleged Letter Protest dated August 29, 2004. Respondent argues that if indeed there was an earlier protest letter filed by petitioner, no mention of the same was seen on the face of the only protest letter he received on September 27, 2004. In fact, the supporting documents were submitted on

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[1] Exhibit 'A' to 'A-3'
[2] Exhibit 'B' & 'B-1'
[3] Exhibit 'C'
[4] Exhibit 'BBBB'
[5] Exhibit 'D'

November 22, 2004, which is within 60 days from the date of its protest letter of September 24, 2004.

On the other hand, petitioner submits that the assailed assessment has not become final and executory. Petitioner asserts that it filed its protest letter dated August 29, 2004 on August 30, 2004, which is within the reglementary period allowed by law to file a protest. Accordingly, the September 24, 2004 letter was for the submission of its supporting documents to substantiate its claim against the erroneous assessment. To support its claim, petitioner presented in evidence the original copies of the Letter Protest dated August 29, 2004, its alleged corresponding registry receipt, and certifications from the postmaster of Olongapo City Post Office and the BIR Post Office as regards their delivery on August 30, 2004 and receipt on September 8, 2004, respectively, of the Registered Mail Matter No. 3824.

This Court rules for the respondent.

In this instant case, the document subject of the registered mail was supposed to be a protest letter to the assessment issued against the petitioner, and, logically, the same should be filed within the reglementary period allowed by law. Under the Rules of Court, the date of mailing by (registered mail) is considered the date of filing of any petition, or pleading.[6] Such service is complete upon the **actual receipt** by the addressee, or **after five (5) days from the date he received the first notice of the postmaster,** whichever is earlier. Since respondent disputes the receipt of the August 29, 2004 protest letter, the burden of showing that the same was actually received by respondent rests on the petitioner. This proof of service and receipt may be certified to by the postmaster involved. However, the same is not the only proof of the actual receipt by the addressee, or the respondent in this case. In fact, it is not even enough proof that a registry receipt is attached to the letter dated August 29, 2004, without a more substantial proof that indeed

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[6] National Waterworks and Sewerage Authority vs. Secretary of Public Works and Communications, 16 SCRA 536

the registered mail matter was actually received by respondent.

Moreover, in the case of **Republic vs. Court of Appeals**[7], the Honorable Supreme Court interpreted Section 3(v) of Rule 131 of the Revised Rules of Court in this manner, to wit:

> *"xxx (W)hile the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the 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 indeed was received by the addressee."*

The testimony of Mr. Jose Resngit as regards the unsigned return card simply cannot be accepted. First and foremost, it is quite perplexing that petitioner failed to submit the Registry Return Card for the alleged Protest Letter of August 29, 2004, if indeed, there was a return card, or a registered mail for that matter, to speak of. It was able to present as witness the alleged in-charge of the registered mail at the BIR Post Office, Mr. Resngit, so what is stopping petitioner from submitting the "unsigned" return card? It is basic that a return card is a very substantial evidence to prove the receipt or non-receipt of a registered mail, which, in this case, petitioner should have put much value on.

It must be stressed that although the rules allow the filing through registered mail, such rule cannot move to favor the sender of such mail only. Normally, the proof of receipt by the addressee of a document/letter is found on the face of the document itself. However, exceptions come in the form of registered mail where an actual stamp **"received"** on the face of the document is not possible. This is where the registry return card comes in. Thus, in cases where the addressee disputes any alleged receipt of the mail matter, the burden of proving the actual receipt reverts back to the sender.

As regards the second argument, from the very text of the August 29, 2004 letter, it categorically refers to the Formal Letter of Demand dated June 9, 2004. It bears emphasis

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[7] 149 SCRA 351

that the issuance of the July 9, 2004 Formal Assessment Notice came about because of the **June 16, 2004** Memorandum of Revenue District Officer Edgar B. Tolentino[8] for the Commissioner of Internal Revenue, recommending the issuance of a Final Assessment Notice against petitioner. Therefore, the August 29, 2004 letter of petitioner could not have possibly referred to the July 9, 2004 Formal Assessment Notice. In fact, petitioner even specifically mentioned that the case against the June 9, 2004 Formal Demand Letter has already been filed with the Supreme Court under GR No. 163445, as well as, with this Court under CTA Case No. 7003. Petitioner's flimsy argument was not cured by its amendment of the Petition for Review nor can petitioner now dispute what it had already admitted.

Additionally, petitioner's argument that the protest letter of September 24, 2004 is one which merely refers to the submission of its supporting documents is flawed. On the face of the September 24, 2004 protest letter, no mention of an earlier issued Protest Letter was ever made. If indeed there was a letter protest dated August 29, 2004, logically, the same should have been referred to in the allegedly second letter of September 24, 2004. However, by the very text of the September 24, 2004 protest letter[9], the same was referred to as the *"**formal protest in disagreement with the said assessment** because it fails to consider the following xxx"*. Subsequently, in a letter dated November 22, 2004,[10] petitioner submitted its relevant documents "***in support of its protest letter dated September 24, 2004***".

Consequently, when petitioner filed its protest letter on September 27, 2004 against the assessment notice of August 25, 2004, the same was filed beyond the reglementary period of thirty (30) days from its receipt of the assessment notice. In this regard, the assailed assessment had become final, executory and demandable for failure of petitioner to timely file its protest letter as required by law.

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[8] Memorandum for the Commissioner of Internal Revenue, BIR Records, p. 255
[9] Annex 'C', CTA Docket, p. 20
[10] Annex 'D', CTA Docket, p. 21

As this Court is a court of special jurisdiction, It can only take cognizance of cases which are clearly within its jurisdiction. Pursuant to Section 7 of Republic Act No. 9282, or the Act Expanding the Jurisdiction of the Court of Tax Appeals, this Court shall exercise:

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 other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue

Xxx xxx xxx

(Emphasis & underscoring Ours.)

An assessment is deemed a disputed one, when the same had been properly and timely protested to within the reglementary period allowed by law pursuant to Section 228 of the National Internal Revenue Code of 1997. In this case at bar, there is no disputed assessment to speak of considering that petitioner failed to timely file its protest letter to the assessment notice issued against it. When it filed its protest letter on September 27, 2004, it was already beyond the thirty (30) day period allowed by law.

WHEREFORE, in view of the foregoing, this instant Motion to Dismiss is hereby **GRANTED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice