REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FOUR SEAS TRADING CORPORATION,
Respondent.

CTA EB No. 2507
(CTA Case No. 9915)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
OCT 16 2023 4:12pm

x- -x

RESOLUTION

***REYES-FAJARDO, J.*:**

For the Court's resolution is respondent's Motion for Reconsideration, dated and filed on May 2, 2023,[1] taking into consideration petitioner's Opposition (Re: Respondent's Motion for Reconsideration dated 02 May 2023), dated and filed on June 23, 2023.[2]

On April 5, 2023, the Court En Banc promulgated a Decision ("assailed Decision") reversing and setting aside the Decision dated

---

1 Motion for Reconsideration, Docket, pp. 247 to 270.

2 Opposition (Re: Respondent's Motion for Reconsideration dated 02 May 2023), pp. 273 to 279.

January 11, 2021 and the Resolution dated June 16, 2021 of the Second Division of this Court (the "Court in Division"), thereby dismissing the Petition for Review filed by respondent herein, Four Seas Trading Corporation, in CTA Case No. 9915, for lack of jurisdiction. The dispositive portion reads:

> "**WHEREFORE**, the Petition for Review filed on July 29, 2021, by the Commissioner of Internal Revenue, is **GRANTED.** The Decision dated January 11, 2021 and Resolution dated June 16, 2021 of the Court in Division are **REVERSED** and **SET ASIDE.** The Petition for Review filed by Four Seas Trading Corporation in CTA Case No. 9915 is **DISMISSED**, for lack of jurisdiction.
>
> **SO ORDERED.**"

In the Motion for Reconsideration, respondent submits that it was deprived of due process of law, that it did not violate the Doctrine of Exhaustion of Administrative Remedies, and that the Court has jurisdiction over the case.[3] Respondent, therefore, prays that judgment be rendered reinstating the Decision and Resolution of the Court in Division, thereby withdrawing and setting aside the Final Notice Before Seizure dated July 31, 2018 and cancelling and setting aside the Final Assessment Notice ("FAN") and the Formal Letter of Demand ("FLD"), all dated January 12, 2018, issued by petitioner against respondent for calendar year ("CY") 2014.[4]

Petitioner, on the other hand, maintains that the Court was correct in setting aside the Decision and Resolution of the Court in Division and in ruling that the Court has no jurisdiction over the original Petition for Review filed by respondent in CTA Case No. 9915.[5]

After a careful review of the records of this case and the arguments of both parties, the Court finds no compelling reason to reverse or modify the assailed Decision dated April 5, 2023.

As exhaustively discussed by the Court in the assailed Decision, *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers,*

3 Motion for Reconsideration, Docket, p. 248.
4 *Id.*, p. 269.
5 Opposition (Re: Respondent's Motion for Reconsideration dated 02 May 2023), p. 273.

Inc.,[6] ordains that a taxpayer, who, after receiving a collection letter from the Bureau of Internal Revenue ("BIR") referring to a final assessment, subsequently receives such assessment, must file an administrative protest on said final assessment before the BIR, so as not to render an appeal to the Court premature.

V.Y. Domingo Jewellers, Inc. made it clear that an administrative protest to the final assessment must be filed with the BIR, notwithstanding whether the receipt thereof by the taxpayer from the BIR was through valid service, or through the taxpayer's own request or volition. The reason is evident — Section 228 of the Tax Code does not distinguish as to how the final assessment was received by the taxpayer for the requirement of prior administrative protest with the BIR to apply.

Significantly, *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper, Incorporated*[7] is explicit that "[w]hen a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the petition is premature and the Court of Tax Appeals has no jurisdiction."

Evident in this case is the fact that respondent requested copies of the FAN from the BIR which it received on August 1, 2018. On August 30, 2018, respondent filed a Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction before the Court in Division without first filing a valid administrative protest with the BIR despite having every opportunity to do so. Thus, constituting a clear violation of the Doctrine of Exhaustion of Administrative Remedies.

To reiterate, what is appealable to the Court are decisions of the BIR on the protest of the taxpayer against the assessments. There being no protest ruling by the petitioner when respondent's petition for review was filed, the dismissal of the same by the Court in

---

6 G.R. No. 221780. March 25, 2019.
7 G.R. No. 239464, May 10, 2021.

Division would have been proper.[8] Any further discussion will only be unnecessarily repetitive.[9]

In the deliberation of respondent's Motion for Reconsideration, Presiding Justice Roman G. Del Rosario, Associate Justices Marian Ivy F. Reyes-Fajardo, Catherine T. Manahan, and Lanee S. Cui-David voted to deny respondent's Motion for Reconsideration, for lack of merit. On the other hand, Associate Justice Jean Marie A. Bacorro-Villena wrote a Dissenting Opinion, while Associate Justices Ma. Belen M. Ringpis-Liban, Maria Rowena Modesto-San Pedro, and Corazon G. Ferrer-Flores, maintained their dissent on the assailed Decision dated April 5, 2023. Associate Justice Henry S. Angeles is on leave. Considering that the majority vote was not obtained, respondent's Motion for Reconsideration is denied, pursuant to Section 3, Rule 2[10] of the Revised Rules of the Court of Tax Appeals (RRCTA).

WHEREFORE, respondent's Motion for Reconsideration is **DENIED,** pursuant to Section 3, Rule 2 of the RRCTA.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

---

8 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

9 *Social Justice Society (SJS) Officers, et al. v. Lim*, G.R Nos. 187836 & 187916, March 10, 2015.

10 **Sec. 3.** *Court en banc; quorum and voting.* - The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a decision of a Division but only a simple majority of the justices present to promulgate a resolution or decision in all cases. **Where the necessary majority vote cannot be had,** the petition shall be dismissed; in appealed cases, the judgement or order appealed from shall stand affirmed; and on all incidental matters, the petition or **motion shall be denied.** (Boldfacing supplied)

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I maintain my Dissenting Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, see Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I maintain my Dissenting Opinion.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

I maintain my Dissenting Opinion.
CORAZON G. FERRER-FLORES
Associate Justice

On Leave
HENRY S. ANGELES
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

FOUR SEAS TRADING CORPORATION,
Respondent.

CTA EB NO. 2507
(CTA Case No. 9915)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ*.

Promulgated:
~~OCT 16 2023~~ 4:17pm

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Justice Marian Ivy F. Reyes-Fajardo, I register my dissent to the *ponencia* in the Court *En Banc*'s Decision promulgated on 05 April 2023 (**assailed Decision**) as it (**1**) grants the present Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) against respondent Four Seas Trading Corporation (**respondent/FSTC**) for lack of merit; (**2**) reverses and sets aside the Second Division's Decision dated 11 January 2021[2] (**Second Division's Decision**) and Resolution dated 16 June 2021[3] (**Second Division's**

1 *Rollo*, pp. 5-56, with annexes.
2 Division Docket, Volume III, pp. 1182-1203.
3 Id., pp. 1235-1240.

Resolution); and thereby, (3) dismisses the original Petition for Review[4] filed by respondent, in CTA Case No. 9915, for lack of jurisdiction.

To recall, in the Second Division's Decision[5], it granted the original Petition for Review[6] and thereby, withdrew and set aside petitioner's Final Notice Before Seizure (**FNBS**) dated 31 July 2018[7] and likewise cancelled and set aside the Preliminary Assessment Notice (**PAN**) dated 20 December 2017[8], the Final Assessment Notices[9] (**FANs**) and the Formal Letter of Demand[10] (**FLD**), all dated 12 January 2018, issued against respondent on the ground that **petitioner violated respondent's right to due process** provided under Section 228[11] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Revenue Regulations (**RR**) No. 12-99[12], as amended by RR No. 18-2013[13], **for failing to prove by substantial evidence that the subject PAN[14], FANs[15] and FLD[16] were properly served to and received by respondent or its authorized representative/s**; this necessarily led to the conclusion that **the subject deficiency tax assessments were void** and the related **FNBS[17] must not be given any effect for being a fruit of a void assessment**. Thereafter, in the Assailed Resolution[18], the Second Division denied petitioner's Motion for Reconsideration[19] (**MR**) thereto for lack of merit.

However, in the assailed Decision, the Court *En Banc* reversed and set aside the Second Division's Decision[20] and Resolution[21] on the ground that the Second Division has no jurisdiction over the case. It upheld petitioner's contention that respondent failed to file a valid administrative protest within thirty (30) days from the latter's receipt of the ***requested copies* of the FANs** on **01 August 2018** and, for this reason, the subject deficiency tax assessments already attained finality. Respondent supposedly had every opportunity to administratively protest the same yet it failed to do so and, instead, it proceeded to file the original Petition for Review (with Application for

4 Division Docket, Volume I, pp. 10-104, with annexes.
5 Supra at note 2.
6 Supra at note 4.
7 Exhibit "P-16", id., Volume II, p. 889; Exhibit "R-26", id., Volume I, p. 269.
8 Exhibit "P-12", id., pp. 883-886; Exhibit "R-14", id., pp. 243-246.
9 Exhibit "P-13", id., pp. 901-908; Exhibits "R-17" to "R-17-g", id., pp. 247-254.
10 Exhibit "P-13", id., pp. 897-900; Exhibit "R-17-h", id., pp. 255-258.
11 **SEC. 228.** *Protesting of Assessment.* — ...
12 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
13 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
14 Supra at note 8.
15 Supra at note 9.
16 Supra at note 10.
17 Supra at note 7.
18 Supra at note 3.
19 Division Docket, Volume III, pp. 1204-1219.
20 Supra at note 2.
21 Supra at note 3.

Temporary Restraining Order [**TRO**] and/or Writ of Preliminary Injunction [**WPI**]).[22]

In ruling that the Second Division did not acquire jurisdiction over the case, the *ponencia* explained that jurisdiction over this case cannot be anchored on "***other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue***" as provided under the **second part** of Section 3(a)(1), Rule 4[23] of the Revised Rules of the Court of Tax Appeals (**RRCTA**), because the original Petition for Review[24] was actually filed under the **first part** of the same provision pertaining to the ***CIR's decision involving disputed assessments*** based on the following circumstances: (1) respondent's aim in filing the petition was to prevent the FANs[25] from attaining finality; (2) the period to appeal was reckoned from receipt of the FANs on 01 August 2018; (3) the nature of the case prays for the cancellation and withdrawal of the FANs; (4) the issues jointly raised by the parties all pertain to the validity of the FANs; and, (5) the specific prayer, in respondent's original Petition for Review[26], seeks to invalidate the FANs.

I respectfully beg to differ.

For the reasons essayed below, I submit that the Court *En Banc* should affirm the Second Division's Decision[27] and Resolution.[28]

THE COURT HAS JURISDICTION TO ENTERTAIN RESPONDENT'S APPEAL UNDER THE *SECOND PART* OF SECTION 3(a)(1), RULE 4 OF THE REVISED RULES OF THE COURT OF TAX APPEALS (RRCTA).

---

22 Supra at note 4.

23 **Rule 4**
JURISDICTION OF THE COURT

...

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** [first part], 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** [second part]. (Italics in the original text and emphasis supplied)

...

24 Supra at note 4.
25 Supra at note 9.
26 Supra at note 4.
27 Supra at note 2.
28 Supra at note 3.

In finding that this case falls under the **first part** of Section 3(a)(1), Rule 4[29] of the RRCTA, the *ponencia* glossed over the admitted fact that respondent had received on **31 July 2018**[30] the **FNBS**[31], which makes reference to the FANs[32] and FLD[33], prior to requesting and securing **copies of the FANs**[34] on **01 August 2018**. The FNBS[35] likewise mentions that a Preliminary Collection Letter (**PCL**) was sent to respondent, requesting the settlement of the deficiency taxes listed therein.

Given that petitioner has already issued a PCL and an FNBS[36] (both based on the subject FANs[37] and FLD[38]), it is evident that respondent's case is way past the assessment stage and is already in the collection stage. At this point where petitioner has already initiated collection efforts and the FNBS conveyed a tenor of finality, I wish to emphasize that respondent can no longer be expected to file an administrative protest against the FANs to dispute the assessment as doing so would be futile.

Instead, respondent's proper and only recourse would be to file a Petition for Review before this Court within 30 days from receipt of the FNBS[39] (the only document that it claims to have received from petitioner prior to receiving the requested copies of the FANs[40]) to prevent the collection of the assessed deficiency taxes (and not to prevent the FANs from attaining finality, which is technically a foregone conclusion during the collection stage) under the second part of Section 3(a)(1), Rule 4[41] of the RRCTA.

Since respondent timely filed its original Petition for Review[42] on **30 August 2018**, within the 30-day reglementary period reckoned from receipt of the FNBS[43] on 31 July 2018, the Court's Second Division properly acquired jurisdiction over the case.

---

29 Supra at note 23.
30 Par. 6, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 572.
31 Supra at note 7.
32 Supra at note 9.
33 Supra at note 10.
34 Supra at note 9.
35 Supra at note 7.
36 Supra at note 7.
37 Supra at note 9.
38 Supra at note 10.
39 Supra at note 7.
40 Supra at note 9.
41 Supra at note 23.
42 Supra at note 4.
43 Supra at note 7.

PETITIONER VIOLATED RESPONDENT'S RIGHT TO DUE PROCESS IN THE ISSUANCE OF THE SUBJECT TAX ASSESSMENTS.

As explained in the Second Division's Decision[44], considering that respondent directly denied receipt of the subject PAN[45], FANs[46] and FLD[47], the burden was shifted to petitioner to prove that the same were duly delivered and actually received by respondent or its authorized representative/s. Unfortunately for petitioner, the only evidence he adduced in proving the fact of mailing are the copies of the corresponding Registry Receipts.[48] These Registry Receipts merely proved the fact of mailing and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented that the subject PAN[49], FANs[50] and FLD[51] were actually served to and received by respondent or by any of its authorized representative.

As cited in the Second Division's Decision[52], the Supreme Court's ruling in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[53] is on point that mere presentation of Registry Receipts is insufficient to prove receipt of assessment notices, *viz*:

> ...
>
> ... [S]ervice of the PAN or the FAN to the taxpayer may be made by registered mail. **Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.**
>
> **In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.**
>
> As ruled by the CTA *En Banc*, <u>the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. It held that the</u>

44 Supra at note 2.
45 Supra at note 8.
46 Supra at note 9.
47 Supra at note 10.
48 Exhibits "R-15" and "R-18", Division Docket, Volume I, pp. 352 and 365, respectively.
49 Supra at note 8.
50 Supra at note 9.
51 Supra at note 10.
52 Supra at note 2.
53 G.R. No. 240729, 24 August 2020.

> witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.
>
> ...
>
> **The Court sees no reason to set aside the findings of the CTA *En Banc*.** "It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, has accordingly developed an exclusive expertise on the resolution [of tax problems,] unless there has been an abuse or improvident exercise of authority." ...[54]
>
> ...

Further, the Supreme Court, in the earlier cases of *Jaime Alferez v. People of the Philippines and Pingping Co.*[55] and *In the Matter of the Petition for Habeas Corpus of Benjamin Vergara, et al., v. Hon. Francisco C. Gedorio, Jr., et al.*[56], ruled that the 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.

The Supreme Court also stressed in the case of *Republic of the Philippines v. Resins, Incorporated,*[57] citing the cases of *The Government of the Philippines v. Victoriano Aballe, et al.*[58] and *Lutgarda Cruz v. The Court of Appeals, et al.*[59], that **it is the registry receipt issued by the mailing office and the affidavit of the person mailing, which proves service made through registered mail. Absent one or the other, or worse both, there is no proof of service.**

Additionally, the Second Division noted its Decision[60] that there is no indication in the subject Registry Receipts[61] that the signatures respectively appearing therein refer to respondent or its authorized representative/s and petitioner's witness expressly admitted during cross-examination that the BIR has no proof that the said assessment notices were actually received by respondent.[62]

54 Citations omitted, emphasis and underscoring supplied.
55 G.R. No. 182301, 31 January 2011.
56 G.R. No. 154037, 30 April 2003.
57 G.R. No. 175891, 12 January 2011.
58 G.R. No. 147212, 24 March 2006.
59 G.R. No. 123340, 29 August 2002.
60 Supra at note 2.
61 Supra at note 48.
62 TSN dated 29 July 2019, p. 6.

Based on the foregoing, petitioner failed to prove the fact of service through registered mail as he only presented in evidence the Registry Receipts[63] (absent the requisite affidavit of the person mailing). There being no proof of service, due process was clearly not accorded to respondent in the issuance of the subject PAN[64], FANs[65] and FLD[66], specifically under Section 228[67] of the NIRC of 1997, as amended, and Section 3.1[68] of RR No. 12-99[69], as amended by RR No. 18-2013.[70]

In view of the crucial violation of respondent's right to due process, the Second Division correctly held that the subject PAN[71], FANs[72] and FLD[73] are all considered void. As such, the subject deficiency tax assessments bear no valid fruit, and the related FNBS[74] must not be given any effect.

All told, I vote to **GRANT** respondent's Motion for Reconsideration and thereby reverse and set aside the Court *En Banc*'s assailed Decision and render a new one denying the present Petition for Review[75] for lack of merit and affirming the Second Division's Decision[76] and Resolution.[77]

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

63 Supra at note 48.
64 Supra at note 8.
65 Supra at note 9.
66 Supra at note 10.
67 Supra at note 11.
68 SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
3.1 Mode of procedure in the issuance of a deficiency tax assessment ...
69 Supra at note 12.
70 Supra at note 13.
71 Supra at note 8.
72 Supra at note 9.
73 Supra at note 10.
74 Supra at note 7.
75 Supra at note 1.
76 Supra at note 2.
77 Supra at note 3.