REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1173 (CTA CASE No. 8350)
-versus-	*Present*: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
BANK OF THE PHILIPPINE ISLANDS, *Respondent.*	Promulgated: APR 21 2016 2:05 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision promulgated on September 16, 2015,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated February 12, 2014 and April 25, 2014, respectively, are hereby **AFFIRMED**.

[1] *En Banc* Docket, pp. 212-233.
[2] *En Banc* Docket, pp. 197-210.

SO ORDERED."

In her motion, CIR insists that this Court has no jurisdiction over the case since the assessment is already final and unappealable. Also, CIR points out that the government's right to assess and collect deficiency income tax from Bank of the Philippine Islands (BPI) has not prescribed. CIR argues that BPI is already estopped from questioning the validity of the Waivers of Statutes of Limitations since it accepted certain benefits derived from the said waivers and they were executed in accordance with law. Lastly, CIR argues that mere denial of receipt of the February 5, 1992 letter is not enough to shift the burden of proving such receipt to the CIR.

On November 12, 2015, this Court issued a Resolution,[3] ordering BPI to file its Comment to the Motion for Reconsideration. Records Verification Report[4] dated January 14, 2016 showed that BPI failed to file its Comment, thus, the Motion for Reconsideration was submitted for resolution on January 29, 2016.[5]

The motion is bereft of merit.

The arguments proffered by CIR in this instant Motion are mere rehash of the arguments raised before the Court in Division and *En Banc*, which were thoroughly and exhaustively passed upon except on the argument that mere denial of receipt of the February 5, 1992 letter is not enough to shift the burden of proving such receipt to the CIR.

On the matter of receipt of the said letter considered by the CIR as the assessment notice, the ruling of the Supreme Court in *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[6] is instructive, *viz*:

[3] *En Banc* Docket, pp. 264-265.
[4] *En Banc* Docket, p. 266.
[5] *En Banc* Docket, pp. 268-269.
[6] G.R. No. 150764, August 7, 2006

"Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held 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 (Republic vs. Court of Appeals, 149 SCRA 351). x x x

xxx xxx xxx

x x x. 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. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), 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 officers, without adequate protection or defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).

x x x."
(Bold in the original; Underlining supplied.)

Since Citytrust Banking Corporation (CBC) denied receipt of the said letter, it is essential for CIR to prove the fact of mailing which can be done through the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by CBC's authorized representative or a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts that the mail matter was served upon CBC's authorized representative.

It is not enough that the CIR insists that it served CBC with the said letter. CIR could have presented the registry return card signed by CBC's authorized representative. The failure of the CIR to prove receipt by CBC of the letter leads to the conclusion that such alleged assessment was not issued.

Nonetheless, even if this Court would consider all Waivers of Statutes of Limitations as valid, thus, making the assessment issued within the prescriptive period, and even if this Court would allow the demand letter dated February 5, 1992 as the reckoning point to collect deficiency income tax from BPI, the issuance of Warrant of Distraint and/or Levy on October 05, 2011 was obviously beyond the three-year period[7] to collect in accordance with Section 223 of the 1977 Tax Code.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

[7] Five years under the National Internal Revenue Code of 1997, Section 222(c) thereof.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice