REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ASIA INTERNATIONAL AUCTIONEERS, INC., ***Petitioner,***	**C.T.A. EB NO. 276** **(C.T.A. CASE NO. 7270)**
	Present:
-versus-	ACOSTA, Presiding Justice CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** AUG 0 3 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Asia International Auctioneers, Inc. (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Resolutions dated November

20, 2006 and February 22, 2007 rendered by the First Division of this Court in C.T.A. Case No. 7270, the respective dispositive portions of which read as follows:

> "**WHEREFORE,** in view of the foregoing, this instant Motion to Dismiss is hereby **GRANTED**.
>
> **SO ORDERED.**"
>
> "**WHEREFORE,** finding no compelling reasons to justifiably amend or overturn this Court's Resolution promulgated on November 20, 2006, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> xxx xxx
>
> **SO ORDERED.**"

THE FACTS

The antecedent facts, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 1492, Lower Mau Camp, Argonaut Highway, Subic Bay Freeport Zone, Olongapo City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the 5th Floor of the

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BIR National Office Building, located at Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.

In a Formal Letter of Demand dated July 9, 2004, which petitioner received on August 25, 2004, respondent assessed petitioner for deficiency VAT and excise tax in the amounts of P102,535,520.00 and P4,334,715.00 respectively, or a total amount of P106,870,235.00, inclusive of penalties and interest for auction sales conducted on February 5, 6, 7 and 8, 2004.

Petitioner allegedly filed its administrative protest on August 29, 2004.

Respondent failed to act on petitioner's administrative protest, hence, on June 20, 2005 petitioner filed a Petition for Review before this Court, docketed as C.T.A. Case No. 7270.

In his Answer filed on July 26, 2005, respondent alleged by way of special and affirmative defenses that the instant case is analogous to the cases of British Overseas Airways Corp., Air India, American Airlines, and Japan Airlines, hence, petitioner is liable to the two and one-half per cent (2.5%) Gross Philippines Billings Tax under Section 28 (A) (3) (a) of the Tax Code; Section 3 of Revenue Regulations No. 15-2002 cited by petitioner does not apply to the instant case in view of the nonretroactivity of rules and regulations; in an action for tax refund/credit, the taxpayer has the burden to establish its right to refund and failure to sustain the burden is fatal to the claim for refund; and well-established is the rule that refunds/tax credits are construed strictly against taxpayer as they partake of the nature of exemption from tax.

On March 8, 2006, respondent filed a Motion to Dismiss on the ground of lack of jurisdiction. On April 6, 2006, petitioner filed its Comment/Objection thereto. Respondent, thereafter, filed his Reply on April 21, 2006.

In a Resolution dated June 13, 2006, the Court ordered petitioner to submit the original copies or certified true copies of its evidence in support of its claim that it filed a letter protest to the formal Letter of Demand by registered mail, and within the prescriptive period.

After the oral arguments on the motion, both parties filed their respective memoranda on September 1, 2006.

On November 20, 2006, the First Division rendered the assailed Resolution granting respondent's Motion to Dismiss.

Not satisfied, on December 12, 2006, petitioner filed a Motion for Reconsideration, to which respondent filed his Opposition on February 6, 2007.

In its Resolution dated February 22, 2007, the First Division denied petitioner's Motion for Reconsideration.

On March 19, 2007, petitioner filed the instant Petition for Review.

On May 18, 2007, We required respondent to file his comment on the petition, within ten (10) days from notice.

On June 5, 2007, respondent filed his Comment.

Hence, the petition is now deemed submitted for decision.

On June 14, 2007, petitioner filed a "Manifestation and Motion" praying that further proceedings and resolution in this case be deferred or suspended until after the final determination of G.R. No. 163445 by the Supreme Court.

ISSUES

Petitioner raised the following issues for the Court En Banc's consideration:

I

> THE HONORABLE COURT'S FIRST DIVISION GRAVELY AND SERIOUSLY ERRED IN DECLARING THAT IT HAS NO JURISDICTION OVER THE INSTANT CASE.

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II

> THE HONORABLE COURT'S FIRST DIVISION GRAVELY AND SERIOUSLY ERRED IN DECLARING THAT THERE IS NO SUBSTANTIAL PROOF THAT THE LETTER PROTEST FILED BY PETITIONER ON AUGUST 30, 2004 THRU REGISTERED MAIL WAS ACTUALLY RECEIVED BY RESPONDENT.

III

> THE HONORABLE COURT'S FIRST DIVISION GRAVELY AND SERIOUSLY ERRED IN DECLARING THAT PETITIONER FAILED TO FILE ITS PROTEST LETTER WITHIN THE REGLEMENTARY PERIOD ALLOWED BY LAW PURSUANT TO SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not the subject assessment was timely protested by the petitioner.

Petitioner's Arguments

Petitioner mainly argues that the assessment subject of its Petition for Review in C.T.A. Case No. 7270 was timely protested and the documentary evidence presented before the Court is sufficient to prove its contention. Petitioner presented its Letter Protest (*Exhibits "A" to "A-3"*), which was mailed on August 30, 2004, as evidenced by Registry Receipt

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No. 3824 (*Exhibits "B" & "B-1"*). Further, petitioner offered in evidence a Certification dated November 15, 2005 issued by the Philippine Postal Corporation of Olongapo City stating therein that said Registered Letter was dispatched under *Bill No. 45* dated September 1, 2004 (*Exhibit "C"*), and another Certification, dated July 5, 2006, issued by Acting Postmaster Josefina M. Hora stating therein that it was delivered to the BIR Records Section and was duly received by the authorized messenger in the person of Mr. Jose Resngit on September 8, 2004 (*Exhibit "BBBB"*). And lastly, a certified true copy of the Records Division's "Receipt of Important Communication Delivered" was presented to prove that the BIR Records Division received a mail with Registry Number 3824 on September 8, 2004 (*Exhibit "D"*).

Petitioner contends that non-submission of the Registry Return Card, which can no longer be found by petitioner, does not erase the fact that said Letter Protest was timely filed thru registered mail and was received by respondent.

Respondent's counter-arguments

Respondent, on his part, argues that this Court has no jurisdiction to act on the petition since the assessment had become final, executory

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and demandable for failure of the petitioner to file its protest within the prescriptive period. Contrary to petitioner's assertion, the BIR Records do not contain any indication whatsoever that a protest was filed on August 30, 2004. What is supported by the BIR Records is the fact that petitioner filed a letter dated September 24, 2004 which was received by the BIR on September 27, 2004, as stated in petitioner's Petition for Review filed in C.T.A. Case No. 7270, and identified the same as its protest to respondent's Assessment Notice and Formal Letter of Demand. Further, respondent avers that the persons certifying to the fact that the mail matters that were sent through registered mail did not state that said mail matters are protest letters or that the mail envelopes contained letters of protest to the Commissioner; there is no indication that these mail matters were sent for and in behalf of petitioner; and petitioner failed to submit the Registry Return Card for the alleged Protest Letter dated August 29, 2004; even assuming that a protest was indeed filed on August 30, 2004, petitioner had only until March 31, 2005 within which to file a petition for review or thirty days from the lapse of the 180-day period, which expired on March 1, 2005. Clearly, the Petition for Review filed on June 20, 2005 and the Amended Petition filed on October 24, 2005 were filed out of time.

THE COURT *EN BANC'S* RULING

The petition is bereft of merit.

After a careful examination of the arguments raised in the instant petition, the Court *En Banc* finds that the issues raised by petitioner are a mere rehash of its memorandum and Motion for Reconsideration filed in C.T.A. Case No. 7270 and present no new arguments nor new matters which have not been considered and passed upon by the First Division in the assailed Resolutions. Nevertheless, the Court *En Banc* will discuss them jointly.

Section 228 of the National Internal Revenue Code of 1997 (hereafter "NIRC of 1997"), *as amended*, provides:

> "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: xxx
>
> xxx xxx
>
> 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 supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> xxx xxx."

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The law is explicit that the taxpayer is given thirty (30) days to protest an assessment and failure to do so would make the assessment final and executory.

In this case, petitioner alleged that it mailed its protest letter on August 30, 2004. The law provides that the date of mailing (by registered mail) is considered the date of filing of any petition or pleading. Petitioner presented documentary exhibits to prove that it mailed its protest letter on August 30, 2004, however, it failed to present the registry return card which is the best evidence to prove that respondent received the protest. What is clear from the records is the receipt by respondent of the September 24, 2004 protest letter, which was mailed on September 27, 2004.

In paragraph 13 of the original Petition for Review filed by petitioner in C.T.A. Case No. 7270, it is stated that petitioner filed a protest letter on September 24, 2004. Said protest letter was attached as Annex "C' of the Petition. The September 24, 2004 protest letter made no mention of any previous letter made or submitted by petitioner to respondent as regards its protest. Furthermore, the letter dated November 22, 2004, *Annex "D"* of the original Petition in C.T.A. Case No. 7270, referred to petitioner's protest dated September 24, 2004, to wit:

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"November 22, 2004

HON. GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue
Bureau of Internal Revenue
BIR Building Diliman, Quezon City

ATTENTION : MR. EDGAR B. TOLENTINO
Revenue District Officer
Revenue District Office No. 19
Bldg. 662 Subic Bay Freeport Zone

Sir:

Further to ***our protest dated September 24, 2004***, we submit the following relevant documents in support and amplification of the said protest, the same to be considered an integral part thereof.

xxx xxx." (Emphasis supplied)

The above letter does not mention of an earlier protest letter dated August 29, 2004. If indeed there was a letter protest dated August 29, 2004, the same should have been referred to both in the above letter dated November 22, 2004 and in the in the September 24, 2004 protest letter.

The documentary evidence presented is not sufficient to prove receipt of the letter protest by the respondent considering that there is a great number of mail matters received by such agency everyday which does not necessarily contain protest letters of taxpayers.

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The contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, however, 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 was indeed received by the addressee. Well-settled is the rule that if the addressee of the letter denies receipt, the burden of proving the same shifts to the sender.

Upon a careful perusal of the evidence on record, We are convinced that petitioner failed to discharge its burden of proving the fact of mailing and receipt by the respondent of the August 29, 2004 Letter Protest.

As aptly ruled by the First Division:

> "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 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 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

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> 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, 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, 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."

For failure of the petitioner to file its protest within thirty (30) days from receipt of the assessment, the assessment had long become final, executory and unappealable, pursuant to *Section 228 of the NIRC of 1997*. As such, the Court in Division cannot take cognizance of the Petition For Review filed in C.T.A. Case No. 7270.

Finding no reversible error, We affirm the First Division in dismissing the Petition for Review in C.T.A. Case No. 7270.

Considering that the questioned assessment had become final and demandable and non-appealable, clearly the Court has no authority to act on the Petition for Review filed in C.T.A. Case No. 7270, hence there is no proceeding to suspend. Accordingly, petitioner's "Manifestation and Motion" filed on June 14, 2007 praying that the proceedings in this case be deferred and suspended is hereby **DENIED** for lack of merit.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED,** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice