REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1444 (CTA Case No. 8743)
- versus -	Members: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, *JJ.*
YUKON GENERAL MANPOWER SERVICES CORP., Respondent.	Promulgated: JUL 24 2017 1:35 p.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review dated April 12, 2016, petitioner Commissioner of Internal Revenue assails the Decision and the Resolution dated December 1, 2015 and March 7, 2016, respectively, both rendered by the Court in Division in CTA Case No. 8743.

Petitioner questions the ruling granting respondent Yukon General Manpower Services Corporation's Petition for Review and lifting the undated Warrant of Garnishment as well as the cancellation and setting aside of the assessment for tax deficiencies for taxable year (TY) 2006, including compromise penalties, interest and surcharges in the total amount of ₱7,216,980.40 issued against respondent. The Court's pronouncement was effectively affirmed in the similarly assailed Resolution dated March 7, 2016, which denied petitioner's motion for reconsideration.

The following established facts remain undisputed:

Petitioner is the Commissioner of Internal Revenue (CIR), with authority to render judgment on disputed assessments, among others. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

Respondent Yukon General Manpower Services Corporation, is a Philippine corporation with office address at the Fifth Floor, Rose Industries Building, No. 11 Pioneer Street, Kapitolyo, Pasig City.

Respondent filed its Annual Income Tax Return (AITR) and Quarterly Value-Added Tax (VAT) Returns for the year 2006 on the following dates:

Tax Return	Date of Actual Filing
VAT 1st Quarter	April 21, 2006
VAT 2nd Quarter	July 20, 2006
VAT 3rd Quarter	October 20, 2006
VAT 4th Quarter	January 23, 2007
Annual Income Tax	April 16, 2007

Petitioner issued a Warrant of Garnishment to effect collection of his assessment for deficiency income tax and VAT for TY 2006 in the amount of P7,216,980.40 allegedly issued against respondent.

On November 11, 2013, respondent received a letter from the Pasig Kapitolyo Branch of Banco de Oro (BDO), informing it that the bank received from petitioner a Warrant of Garnishment directing it to garnish respondent's funds to answer for its deficiency income tax and VAT liabilities for TY 2006 in the amount of ₱7,216,980.40.

On November 22, 2013, respondent filed with petitioner an Administrative Protest Letter of even date, questioning the issuance of the Warrant of Garnishment there being no Final Assessment Notice (FAN) and/or Final Letter of Demand (FLD) served upon it.

On December 6, 2013, respondent filed a Petition for Review with the Court in Division, praying for the lifting of the Warrant of Garnishment, and for the cancellation and withdrawal of the assessment for tax deficiencies, inclusive of compromise penalties, interests and surcharges in the amount of ₱7,216,980.40 for TY 2006.

After trial, the Court in Division rendered the assailed Decision dated December 1, 2015, followed by the equally assailed Resolution of March 7, 2016.

The Court in Division found merit in the Petition for Review filed by respondent and accordingly lifted the Warrant of Garnishment issued by petitioner. The assessment subject of the Warrant of Garnishment was also cancelled as respondent was not accorded due process pursuant to Section 228 of the National Internal Revenue Code (NIRC), as amended, as no valid Preliminary Assessment Notice (PAN), FAN and/or FLD were received by respondent prior to the issuance of the Warrant. Besides, petitioner's right to issue any deficiency income tax assessment for TY 2006 has already prescribed.

The Decision of December 1, 2015 was effectively affirmed when the Court in Division denied petitioner's plea for reconsideration for lack of merit.

Hence, this Petition for Review before the Court *En Banc* filed by petitioner CIR.

Petitioner argues that contrary to the finding of the Court in Division, the PAN dated January 6, 2010, the FLD with Assessment Notices dated January 22, 2010, as well as the Warrant of Garnishment, were all validly issued against respondent.

(100)

The PAN was sent through registered mail to respondent's registered address at 1104 Federal Tower Condominium, Dasmariñas Street, Tondo, Manila on January 7, 2010, while the FAN and FLD, on January 22, 2010. Based on established jurisprudence, correspondences sent by registered mail are presumed received in the regular course of mail.

It is of no moment that respondent already moved to a different address. Section 236(D) of the NIRC, as amended, and Section 12(B) of Revenue Regulations (RR) No. 11-08 dated August 15, 2008, mandates respondent to update its registration status by filing an application for registration update with its current Revenue District Office (RDO), copy furnished the new RDO where it is transferring office.

While it may be true that respondent filed an Application for Registration Information Update on March 31, 2009 to inform the BIR of its change of address, the same was however filed with the wrong RDO - RDO 29 San Nicolas-Tondo - instead of the RDO, Pasig City where respondent moved its office. Petitioner considers this a violation of RR No. 11-08 which provides that an Application for Registration Information Update should be filed with both its former and new RDO. In the mind of petitioner, respondent's old address found in the BIR computer system is still its valid and correct address.

Further, when the 2006 tax docket of respondent was forwarded by RDO 30 Binondo to the BIR Assessment Division on July 2, 2008 for review and issuance of the PAN and the FAN, respondent's registered address as verified from the BIR computer system was still 1104 Federal Tower Condominium, Dasmariñas Street, Binondo, Manila. For petitioner, this constitutes respondent's "representation" that at that time, it was still a registered taxpayer of RDO 30, hence, the PAN and FAN sent through registered mail at respondent's address reflected in the BIR record were binding on the latter, who, in addition, is already estopped from claiming that the PAN and FAN were sent to the wrong address.

Considering that the PAN and the FAN were properly sent to respondent, it follows that the Warrant of Garnishment subsequently issued was likewise proper and valid.

In reply,[1] respondent counters that the arguments in the Petition for Review before the Court *En Banc* are but a veritable reproduction of petitioner's arguments in its motion for reconsideration filed with the Court in Division. In fine, there was nothing in this Petition for Review which has not been addressed by the Court in Division in the assailed Decision and Resolution.

Moreover, petitioner has not shown any flaw in the Court's finding that neither PAN, nor FAN/FLD was received by respondent, thereby depriving it of its right to due process for not having been informed of the law and the facts upon which the assessment was based, as required under Section 228 of the NIRC, as amended.

The record is clear that no assessment notices were received by respondent since both the PAN and the FAN/FLD sent through registered mail in 2010 were sent to respondent's old address at 1104 Federal Tower Condominium, Dasmariñas Street, Binondo, Manila. As early as March 31, 2009, respondent submitted to the BIR an Application for Registration Information Update informing petitioner that it already transferred to its new office at 11 Pioneer Street, Barrio Kapitolyo, Pasig City.

Petitioner cannot feign ignorance about respondent's new address since he already indicated it in his various Requests for Presentation of Records, Audit Reports, and the Warrants of Garnishment he issued against respondent.

Respondent gives respect to the findings of fact of the trial court saying that it cannot be disturbed on appeal unless substantial facts and circumstances have been overlooked which if properly considered, might affect the assailed ruling, which allegedly is not obtaining in the present case. Respondent agrees with the finding that there

[1] Comment dated July 20, 2016.

was no valid service of mandatory assessment notices upon it rendering the subject assessment void, as well as the Warrant of Garnishment issued against it.

Respondent also posits that since no PAN and FAN/FLD have been received by respondent for the year 2006, petitioner's right to assess within the period of three (3) years had already prescribed pursuant to Section 203 of the NIRC, as amended.

The instant Petition was submitted for decision on August 16, 2016.[2]

THE RULING OF THE COURT

The main issue in this case is whether the subject tax deficiency assessment for TY 2006 was validly issued giving petitioner the right to collect it by virtue of the assailed Warrant of Garnishment he issued against respondent.

Section 228 of the NIRC, as amended, relevantly provides, thus:

> 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: x x x
>
> **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 supporting

[2] Resolution dated August 16, 2016.

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

It is therefore, mandatory that the taxpayer be informed in writing of the law and the facts upon which the assessment is made, lest such assessment is void. The use of the word "shall" in the legal provisions indicates the mandatory nature of the requirements laid down therein.[3]

Both Section 228 of the NIRC of 1997 and Section 3.1.4[4] of RR No. 12-99 explicitly require the written details on the nature, factual and legal bases of the subject deficiency tax assessments.[5]

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.[6]

---

[3] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.

[4] SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
x x x x x x x x x
3.1.4 Formal Letter of Demand and Assessment Notice. The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof).

The same shall be sent to the taxpayer only by registered mail or by personal delivery.

If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
x x x.

[5] Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014.

[6] Id.

(104)

In the instant case, the PAN dated January 6, 2010 and the FLD with Assessment Notices dated January 22, 2010 were allegedly sent to respondent through registered mail.[7] However, receipt thereof by respondent was not established. Much more, it was denied by respondent. Note that the fact of mailing is not synonymous to receipt.

While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still 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.[8]

On the matter, respondent's witness, Sylvia C. Carpio testified as follows:

> "Q27: Did you receive a Preliminary Assessment Notice for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A27: No, we did not.
>
> Q28: Did you receive a Final Assessment Notice for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A28: No, we did not.
>
> Q29: Did you receive a Formal Letter of Demand for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A29: No, we did not."[9]

In case of denial of receipt of assessment notices by the taxpayer, petitioner or the BIR has the burden of proof to show that such assessment was indeed received by the taxpayer. The ruling of the High Court on the matter is instructive:

---

[7] See Exhibit R-40, Judicial Affidavit of Mr. Armando C. Macatangay dated February 18, 2014, Division docket pp. 167-170.
[8] Barcelon, Roxas Securities, Inc. (Now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 157064, August 07, 2006
[9] Judicial Affidavit dated January 29, 2014, Division docket p. 75

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 letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:

> "The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269)."

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 offices, without adequate protection or defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).
>
> X x x
>
> The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment of the said period has already prescribed. (Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR CTA Case 4885, August 22, 1996).[10]

As found by the Court in Division, the record is bereft of any indication that respondent received the PAN and the FAN/FLD issued by petitioner. The latter failed to present the signed/received Post Office Registry Receipt or certification from the Postmaster to prove compliance with the mandatory requirement on assessment notices.

The defense that the assessment notices were sent to the old but still valid address of respondent cannot eclipse the fact that respondent notified petitioner of its change of address[11] long before petitioner issued the assessment notices. Evidence show that respondent submitted an Application for Registration Information Update[12] as early as March 31, 2009[13] indicating its new address, viz., 2F Rose Industries Bldg., #11 Pioneer St., Barrio Kapitolyo, Pasig City. Long thereafter, or on January 6, 2010, petitioner issued the PAN which was mailed on the next day, January 7, 2010.[14] Petitioner issued the FLD on January 22, 2010 and it was mailed on January 22, 2010.[15]

---

[10] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 13, 2010 [citing Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 150764, August 07, 2006, 498 SCRA 126, 135-136].
[11] TSN dated August 18, 2014 pp. 11-12.
[12] Exhibit P-9.
[13] Exhibit R-37.
[14] See Exhibit R-40, Judicial Affidavit of Mr. Armando C. Macatangay dated February 18, 2014, Division docket p. 168.
[15] See Exhibit R-40, Judicial Affidavit of Mr. Armando C. Macatangay dated February 18, 2014, Division docket p. 168-169.

Further, the change of respondent's address was reflected in its Certificate of Registration[16] dated May 25, 2009 issued by BIR RDO 43A, the new RDO of respondent in its new location. The said Certificate of Registration also clearly indicated the transfer by respondent from RDO 30 Binondo to RDO 43A Pasig City. In other words, respondent substantially complied with Section 12(B) of RR No. 11-2008 by informing both the old and the new RDO of its change of address. In fine, petitioner has only himself to blame for the *faux pas* on the service of assessment notices as he obviously failed to verify his own record.

Significantly, it has been held that if the BIR is already aware of the new location of the taxpayer, even in the absence of any formal application for change of address, the BIR cannot simply pretend lack of knowledge of the change of address and is bound to send any issuances or notices to such new location of the taxpayer. This was the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, thus:

> It is true that, under Section 223 of the Tax Reform Act of 1997, the running of the Statute of Limitations provided under the provisions of Sections 203 and 222 of the same Act shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected. In addition, Section 11 of Revenue Regulation No. 12-85 states that, in case of change of address, the taxpayer is required to give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business. However, this Court agrees with both the CTA Special First Division and the *CTA En Banc* in their ruling that the abovementioned provisions on the suspension of the three-year period to assess apply only if the BIR Commissioner is not aware of the whereabouts of the taxpayer.
>
> In the present case, petitioner, by all indications, is well aware that respondent had moved to its new address in Calamba, Laguna, as shown by the following documents which form part of respondent's records with the BIR:
>
> x x x x x x x x x

---

[16] Exhibit P-10.

> The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna. The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the above mentioned records:
>
> x x x x x x x x x
>
> Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records.[17]

Further, aside from the Certificate of Registration dated May 25, 2009 issued by BIR RDO 43A, several other documents issued by petitioner or the BIR show that petitioner was aware of respondent's new office address, namely:

1. Summons and/or Subpoena Duces Tecum dated February 29, 2008;[18]
2. Notice of Informal Conference dated June 4, 2008;[19]
3. Final Request for Presentation of Documents dated November 29, 2007;[20]
4. Memorandum dated February 8, 2008;[21]
5. Memorandum dated June 26, 2008;[22]
6. Memorandum dated December 22, 2009;[23]
7. Revenue Officer's Audit Report on IT (Form No. 0500);[24]
8. Revenue Officer's Audit Report on VAT (Form No. 0507);[25]
9. Warrant of Garnishment addressed to Bank of the Philippine Islands;[26]
10. Warrant of Garnishment addressed to Union Bank of the Philippines;[27]

---

[17] G.R. No. 198677, November 26, 2014.
[18] Exhibit R-6.
[19] Exhibit R-9.
[20] Exhibit R-4.
[21] Exhibit R-5.
[22] Exhibit R-10.
[23] Exhibit R-17.
[24] Exhibit R-19.
[25] Exhibit R-20.
[26] Exhibit R-31.
[27] Exhibit R-32.

11. Warrant of Garnishment addressed to China Banking Corporation;[28]
12. Warrant of Garnishment addressed to Philippine Savings Bank;[29]
13. Warrant of Garnishment addressed to United Coconut Planters Bank;[30]
14. Warrant of Garnishment addressed to Banco de Oro Universal Bank.[31]

Without receipt of the PAN and FLD, respondent was deprived of due process required under Section 228 of the NIRC, as amended. Consequently, the subject assessment is deemed null and void.

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. <u>Due process requires that it must be served on and received by the taxpayer</u>.[32]

Without a valid assessment, the subsequently issued Warrant of Garnishment is likewise illegal since a void assessment bears no valid fruit. [33]

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[34]

---

[28] Exhibit R-33.
[29] Exhibit R-34.
[30] Exhibit R-35.
[31] Exhibit R-36.
[32] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008.
[33] Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014.
[34] Commissioner of Internal Revenue vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.

WHEREFORE, the Petition for Review dated April 12, 2016 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

Consequently, the Decision dated December 1, 2015 and the Resolution dated March 7, 2016 rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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

Ma. Belen
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