REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FRESH N' FAMOUS FOODS, INC., Petitioner,	**CTA CASE NO. 8173**
- versus -	Present: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 15 2016 4:25 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

THE CASE

This resolves the Petition for Review filed by Fresh N' Famous Foods, Inc. to seek the reversal and setting aside of the assailed Decision of the Commissioner of Internal Revenue promulgated on August 17, 2010, and the cancellation of the assessments for deficiency income tax in the amount of ₱97,096,171.24, deficiency value-added tax (VAT) in the amount of ₱2,457,064.89, deficiency expanded withholding tax (EWT) in the amount of ₱20,549,057.51, deficiency documentary stamp tax in the amounts of ₱4,277,166.19 and ₱460,345.77, and compromise penalty in the amount of ₱41,000.00, for taxable year 2000.

THE FACTS

Petitioner Fresh N' Famous Foods, Inc. is a corporation duly organized and existing under the laws of the Philippines. It was formerly called Chowking Food Corporation before changing its corporate name in November 2006.

Petitioner is the surviving entity after it merged with Greenwich Pizza Corporation and Baker Fresh Foods Philippines, Inc. on November 10, 2006.[1]

Petitioner is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 000-333-173-000. During the period relevant to this case, Greenwich Pizza Corporation was still an independent juridical entity with Tax Identification Number 003-934-003-000.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to act as such, including, among others, to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provision of the National Internal Revenue Code (NIRC). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 30, 2003, the BIR issued a Post Reporting Notice after the examination of petitioner's books of accounts. It showed a tax deficiency liability on the part of petitioner in the total amount of ₱52,812,379.72.[3]

Petitioner replied to the Post Reporting Notice by filing a letter-reply dated February 28, 2003, which was later received by the BIR on March 3, 2003.[4]

Subsequently, on April 13, 2004, the BIR Collection Division served upon petitioner a Preliminary Collection Notice of even date and informed petitioner about its alleged deficiency tax liability amounting to ₱124,970,805.60.[5]

Petitioner thereafter filed a letter-reply on the Preliminary Collection Notice on April 14, 2004[6] and another letter dated April 30, 2004.[7]

The BIR Collection Division furnished petitioner on April 16, 2004 with a copy of the Preliminary Assessment Notice (PAN) relating to the Preliminary Collection Notice.[8]

On May 19, 2004, petitioner filed its letter protest to the PAN with the BIR Regional District Office No. 40.[9]

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[1] Par. 1.1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 277.
[2] Par. 1.2, Summary of Admitted Facts, JSFI, docket, vol. I, p. 278; BIR Records, p. 1209.
[3] Exhibit "A", docket, vol. II, p. 843; Exhibits "3" to "3-b", BIR Records, pp. 1156-1158.
[4] Exhibit "B", docket, vol. II, p. 844; BIR Records, p. 1155.
[5] Exhibits "C" to "C-6", docket, vol. II, p. 845-851; Exhibit "10", BIR Records, p. 1257.
[6] Exhibit "D", docket, vol. II, p. 852; BIR Records, p. 1210.
[7] Exhibit "E", docket, vol. II, p. 853; BIR Records, pp. 1214-1215.
[8] Exhibit "6", BIR Records, pp. 1259-1262.
[9] Exhibit "F", docket, vol. II, pp. 855-863.

Petitioner availed of the government's Tax Amnesty Program under Republic Act (RA) No. 9480 on March 5, 2008.[10]

On August 17, 2010, respondent rendered the assailed Decision[11] upholding the assessment against petitioner in the total amount of ₱124,880,805.60. Petitioner received said Decision on September 6, 2010,[12] and filed a Petition for Review[13] before the Court on October 6, 2010.

Respondent filed his Answer[14] to the Petition for Review on December 3, 2010, interposing the following special and affirmative defenses:

> 8. All presumptions are in favor of the correctness of the Assessment;
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> 9. The Assessment/Demand Letter 40456 dated 23 January 2004 for the year 2000 against the petitioner was issued in compliance with the provisions of Section 228 of the National Internal Revenue Code and in accordance to existing Revenue Rules and Regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal bases upon which the assessment was made.
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> 10. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.
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> 11. The subject Assessment has already become final, unappealable, executory and demandable by reason of the failure of the petitioner to file a protest against the same.
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> 12. The failure of the petitioner/taxpayer to timely file a protest against the 'Final Assessment Notice' is vital to cases of this nature, failing such the Assessment becomes incontestable.

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[10] Exhibits "G-1" and "G-2", docket, vol. I, pp. 459-460.
[11] Exhibit "9", BIR Records, pp. 1304-1313.
[12] Par. 1.2, Petition for Review, docket, vol. I, p. 1.
[13] Petition for Review, docket, vol. I, pp. 1-33.
[14] Docket, vol. I, pp. 208-211.

13. The Assessment has not only become final and incontestable but in fact, partially executed by the issuance of the Warrant of Garnishment against the petitioner.

14. Assuming, for the sake of argument, that the 'protest' filed by the taxpayer against the **Preliminary Assessment Notice** can be treated as a valid protest contemplated by law, the same was filed beyond the 30 day period prescribed by law. The said 'protest' was filed not on May 17, 2004 but on May 19, 2004.

15. The petitioner failed to comply with the Requirements of Revenue Regulations No. 12-85 relative to the requirements which must be complied concerning change of address of taxpayers..

16. Since the Assessment has become final and executory prior to the availment of the Tax Amnesty Program, petitioner is no longer qualified to avail of the benefits of the said tax program pursuant to the provisions of R.A. 9480 (Tax Amnesty Act of 2007) as implemented by Department Order No. 29-07 and Revenue Memorandum Circular No. 69-2007 dated 5 November 2007.

17. The deficiency income tax assessment was based on the ground that the beginning inventory of the petitioner (GPC) for the year 2000 was overstated thereby resulting to the understatement of the reported income for the said year pursuant to 34 41 of the NIRC.

18. The petitioner (GPC) failed to withhold and remit the corresponding withholding tax from income payments claimed as deductions from gross income, hence disallowed pursuant to 34(K) of the NIRC.

19. The miscellaneous expenses claimed as deduction from gross income for the taxable year 2000 were overstated resulting to the understatement of the reported taxable income for the said year pursuant to section 31 of the NIRC.

20. Verification likewise disclosed that the interest expense deduction was not supported by appropriate documents, hence disallowed as deductible expense pursuant to the provisions of Section 34(B) of the NIRC.

21. The deficiency value-added tax assessment is premised on the finding that the petitioner (GPC) has an undeclared income, assessed pursuant to the provisions of Sec. 106 and 108 of the NIRC.

22. Verification also disclosed that the petitioner (GPC) failed to withhold and remit the corresponding withholding tax due on various income payments actually incurred and paid for the taxable year 2000 pursuant to Revenue Regulations No. 2-98.

23. The deficiency documentary stamp tax assessment was based on the petitioner's failure to file and pay the corresponding documentary stamp tax due from the amount of additional capital stock subscribed and paid from various long-term lease contracts pursuant to Section 175 and section 194 of the NIRC.

24. The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC.

25. The 25% surcharge has been imposed pursuant to the provisions of Section 248 (A) of the NIRC.

The Court set the Pre-Trial Conference on January 21, 2011,[15] which was reset to June 3, 2011.[16]

On January 18, 2011, petitioner served on respondent Interrogatories to Party,[17] to which respondent's counsel filed an Answer (To Petitioner's Interrogatories to Party)[18] on March 16, 2011.

The Pre-Trial Brief (For the Petitioner)[19] was filed on January 18, 2011; while respondent's Pre-Trial Brief[20] was filed on January 20, 2011. The parties filed their Joint Stipulation of Facts and Issues[21] on July 19, 2011. The Pre-Trial Order was issued on August 10, 2011, terminating the pre-trial of the case and setting the initial presentation of petitioners' evidence.[22]

[15] Notice of Pre-Trial Conference dated December 7, 2010, docket, vol. I, p. 212.
[16] Docket, vol. I, p. 274.
[17] Docket, vol. I, pp. 226-231.
[18] Docket, vol. I, pp. 239-240.
[19] Docket, vol. I, pp. 213-225.
[20] Docket, vol. I, pp. 226-228.
[21] Docket, vol. I, pp. 277-281.
[22] Docket, vol. I, pp. 287-292.

On October 7, 2011, petitioner filed a Motion for Summary Judgment,[23] which was denied in a Resolution[24] dated March 19, 2012.

During the hearing on June 18, 2012,[25] petitioner presented Atty. Gerry E. Valdez, petitioner's former Tax Manager, who testified on his Judicial Affidavit dated October 6, 2011.[26] Petitioner likewise presented Ms. Ma. Consuelo Serrano[27], the previous Comptroller of petitioner, during the hearing held on July 11, 2012 and September 13, 2012, who testified by way of Judicial Affidavit executed on July 9, 2012.[28] Petitioner also presented the testimonies of Ms. Marifloss S. Alilio[29], petitioner's Corporate Accounting Manager and Ms. Ma. Fedna V. Balo-Parallag[30], the Court-commissioned Independent Certified Public Accountant (CPA), during the hearing held on October 11, 2012[31] and on June 17, 2013[32], respectively.

After presentation, marking, identification, and formal offer, the Court admitted Exhibits "A", "B", "C" to "H", "M", "Q" to "T", "U", "V" to "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "TT", "UU", "VV", "WW", "XX", "ZZ", "AAA", "BBB", "DDD", "EEE", "FFF", "GGG", "HHH", "III", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "PPP", "QQQ", and "RRR" to "RRR-39" as part of petitioners' evidence.[33] On the other hand, Exhibits "I", "K", "L", "P", "SS", "CCC", "P-1" to "P-3", and "YY" were denied admission.[34]

On the other hand, respondent presented the testimony of Revenue Officer Wilfredo G. Ablola, the one who conducted the tax audit of petitioner for taxable year 2000 by way of a Judicial Affidavit dated November 6, 2014.[35] Respondent also presented the testimony of Mr. Florido B. Saso, the then Revenue Officer Seizure Agent of the Collection Section of Regional District Office (RDO) No. 41, by way of Amended Judicial Affidavit dated May 22, 2015.[36] As to respondent's documentary evidence, the Court admitted Exhibits "1" to "16", except for Exhibit "8" for failure to have the same identified in Court.[37]

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[23] Docket, vol. I, pp. 310-336.
[24] Docket, vol. I, pp. 515-518.
[25] Minutes of the hearing held on June 18, 2012, docket, vol. II, p. 552.
[26] Exhibit "VV", docket, vol. I, pp. 337-340.
[27] Minutes of the hearing held on July 11, 2012, docket, vol. II, p. 661.
[28] Exhibit "WW", docket, vol. II, pp. 556-571.
[29] Exhibit "XX", docket, vol. II, pp. 668-673.
[30] Exhibit "AAA", docket, vol. II, pp. 718-751.
[31] Minutes of the hearing held on October 11, 2012, docket, vol. II, p. 694.
[32] Minutes of the hearing held on June 17, 2013, docket, vol. II, p. 756.
[33] Resolutions dated May 27, 2014, September 10, 2014 and September 23, 2015, docket, vol. IV, pp. 2146-2147 and 2173-2174; docket, vol. V, pp. 2291-2293.
[34] Resolution dated September 23, 2015, docket, vol. V, pp. 2291-2293.
[35] Exhibit "11", docket, vol. IV, pp. 2189-2195; Minutes of the hearing held on November 13, 2014, docket, vol. IV, p. 2200.
[36] Docket, vol. V, pp. 2239-2243, Minutes of the Hearing held on July 13, 2015, docket, vol. V, p. 2244.
[37] Resolution dated September 23, 2015, docket, vol. V, pp. 2291-2293.

Petitioner submitted its Memorandum[38] on December 8, 2015; while respondent failed to file a Memorandum.[39] Hence, the case was declared submitted for decision on January 6, 2016.[40]

THE ISSUES

The parties submitted the following issues for the Court's disposition:[41]

1. Whether the Bureau of Internal Revenue has properly and timely served Fresh N' Famous a valid final assessment of deficiency income tax, deficiency value-added tax, deficiency expanded withholding tax, deficiency documentary stamp tax and compromise penalty for the taxable year 2000 within the three (3) year period prescribed under the law;

2. Assuming that the Bureau of Internal Revenue served Fresh N' Famous with a valid final assessment, whether Fresh N' Famous has submitted a protest letter to the said tax assessment within the prescribed period within which to protest an assessment;

3. Assuming that the Bureau of Internal Revenue served Fresh N' Famous with a valid final assessment, whether the alleged income tax, value added tax and deficiency tax liability of Fresh N' Famous arising from taxable year 2000 is extinguished by the availment of Fresh N' Famous of the tax amnesty program under R.A. No. 9480; and

4. Assuming that the Bureau of Internal Revenue served Fresh N' Famous with a valid final assessment, whether said assessment issued by the Bureau of Internal Revenue for the deficiency income tax, deficiency value-added tax, deficiency expanded withholding tax, deficiency documentary stamp tax and compromise penalty has legal or factual bases.

THE RULING OF THE COURT

Petitioner alleges that respondent failed to properly and timely serve a valid final assessment of deficiency income tax, deficiency value-added tax, deficiency expanded withholding tax, deficiency documentary stamp tax, and

[38] Docket, vol. V, pp. 2309-2350.
[39] Docket, vol. V, p. 2354.
[40] Resolution dated January 6, 2016, docket, vol. V, p. 2360.
[41] Issues, Pre-Trial Order dated August 10, 2011, docket, vol. I, pp. 288-289.

compromise penalty for taxable year 2000 within the three (3)-year period prescribed under the law.

Respondent, on the other hand, claims that the Final Assessment Notice (FAN)/Final Demand Letter (FLD) No. 40456 dated January 23, 2004 for taxable year 2000 against petitioner was issued in compliance with the provisions of Section 228 of the NIRC of 1997, as amended, and in accordance with existing Rules and Regulations relative to the right of petitioner to be informed of the factual and legal bases upon which the assessment was made.

Respondent maintains that the FAN, the FLD, and the Details of Discrepancies were all sent at the same time to petitioner, which allegedly contained, in detail, the manner of computation, the facts on which the assessment was based, and the provisions of law used in arriving at such deficiency assessment.

We disagree with respondent.

The requirement of informing the taxpayer of the assessment is mandatory under Section 228 of the National Internal Revenue Code of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99.

Section 228 of the NIRC of 1997, as amended, provides that taxpayers must be informed of the facts and law upon which the assessment was made; otherwise, **the assessment will be void**. In addition, the taxpayer is granted the opportunity to protest the assessment within thirty (30) days from receipt thereof and if the protest is denied or not acted upon by respondent within a given period of time, the taxpayer is given another remedy of filing an appeal before this Court. Section 228 reads:

> 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **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 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)*

Furthermore, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the FAN by respondent and the receipt thereof by the taxpayer as part of due process in the issuance of assessments. It provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
>
> 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.

Applying the foregoing, the Court finds that there was no valid service of FAN, FLD, and/or Details of Discrepancies to petitioner in this case. While respondent alleges that there was proper service of the FAN with the FLD and the Details of Discrepancies, petitioner directly denies receipt thereof.

It is imperative for respondent to satisfactorily prove the release, mailing or sending of the FAN. The Supreme Court, in *Barcelon, Roxas Securities Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[42], citing *Nava vs. Commissioner of Internal Revenue*[43], held:

> While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, **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. *(Citations omitted. Emphasis supplied)*

Respondent's witness, Mr. Florido B. Saso, the Revenue Officer Seizure Agent assigned to process the collection proceedings against petitioner, testified that the deficiency assessment had been served and mailed through registered mail because of the Transmittal Letter[44] of the BIR to the Post Office regarding the FAN/FLD against petitioner on January 23, 2004.[45]

In the assailed Decision dated August 17, 2010, respondent cited Section 3(v) of Rule 131 of the Rules of Court, which provides that a letter, duly directed and mailed is **deemed received by petitioner in the regular course of the mail** to show that respondent properly notified petitioner of the assessment.[46]

However, in order to raise this presumption, the following must be proved: (a) **that the letter was properly addressed with postage prepaid**, and (b) **that it was mailed.**[47] The presumption will not lie if one of these facts is

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[42] G.R. No. 157064, August 7, 2006.
[43] G.R. No. L-19470, January 30, 1965.
[44] Exhibit "14", docket, vol. V, p. 2222.
[45] Exhibit "11", docket, vol. V, pp. 2239-2242.
[46] Exhibit "9", BIR Records, pp. 1304-1313.
[47] *Supra*, note 42.

not shown.[48] Only when facts are proved, will the presumption 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 arise.

Records show that the address of petitioner as indicated in the Transmittal Letter dated January 23, 2004 is petitioner's former address, which was 140 N. Domingo Street, Cubao, Quezon City. Respondent's witness, Mr. Ablola, the one who conducted the tax audit of petitioner for taxable year 2000, testified that they were not informed by petitioner of its transfer to the new address.

Nevertheless, the same testimony of Mr. Ablola reveals that he conducted the audit of petitioner's books of accounts at the office of Jollibee Food Corporation located in Pasig, which is the new address of petitioner. The significant portion of the testimony of Mr. Ablola reads:

> ATTY. SONTILLANO
> Q. Now, you mentioned in your answer to No. 11, that you served this letter of authority at the office of Greenwhich Pizza at 140 N. Domingo St., Cubao?
>
> MR. ABLOLA
> A. Yes, that was the given address in my letter of authority in the ITR, at that time, so I served it there.
>
> ATTY. SONTILLANO
> Q. Okay, now let me ask you the basis for your statement that that is the office of the Greenwich?
>
> MR. ABLOLA
> A. No, that was the time that Greenwich was bought by Jollibee Food Corporation, it was the transition time and during the time it was the office of the Greenwich.
>
> ATTY. SONTILLANO
> Q. And then?
>
> MR. ABLOLA
> A. When we conducted the audit it was already in the office of the Jollibee which is located in Pasig.
>
> ATTY. SONTILLANO
> Q. Because of the transition?

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[48] Id.

MR. ABLOLA
A. Because of the transition.[49]

The BIR Records also show that before the alleged date of mailing of the FAN on January 23, 2004, petitioner sent a letter-reply to the Post Reporting Notice on February 28, 2003 showing that the address of petitioner is already at Jollibee Center, San Miguel Avenue, Ortigas Centre, Pasig City.[50] The Certificate of Registration of petitioner also reflects petitioner's new business address bearing the registration date January 25, 1996 and the following notation:

> ***TRANSFEREE
> FROM RDO 040 CUBAO QC W/ TCN DATED 12/13/01
> DATE: 9/05/02

From the foregoing, it can be inferred that while respondent is well aware that petitioner had moved to its new address, he chose to send the FAN to petitioner's former address. Thus, it cannot be said that the mail matter was properly addressed.

Moreover, the records show that respondent failed to present adequate supporting evidence to prove the fact of mailing of the alleged FAN, FLD, and Details of Discrepancies for petitioner's alleged deficiency taxes for taxable year 2000. Respondent merely presented the Transmittal Letter and the testimony of Mr. Saso in trying to prove that the FAN, the FLD, and the Details of Discrepancies were properly mailed.

The testimony of Mr. Saso on cross-examination during the hearing held on July 13, 2015, revealed, however, that he had no participation in the preparation of the Transmittal Letter.[51] The testimony likewise showed that he was not the one who mailed the FAN, the FLD, and the Details of Discrepancies.[52]

To prove the fact of mailing, it is essential to show 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. 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 pertaining to the mailing of the said documents. Respondent failed to present any of these documents. The Court cannot put much credence to the Transmittal Letter, which is a self-serving

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[49] Transcript of Stenographic Notes (TSN) dated November 13, 2014, pp. 16-17.
[50] Exhibit "B", docket, vol. II, p. 844; BIR Records, p. 1155.
[51] TSN dated July 13, 2015, pp. 21-22.
[52] Exhibit "17", docket, vol. V, pp. 2239-2242.

documentation made by BIR personnel, especially since it is unsupported by substantial evidence establishing the fact of mailing.

Considering the foregoing, it cannot be presumed that the FAN, the FLD, and the Details of Discrepancies were received by petitioner in the ordinary course of the mail.

Even assuming that the said legal presumption can be applied in this case, the same is merely a disputable presumption.

In *Barcelon*, the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was **indeed received by the addressee**. Here, there was also no showing that the FAN was received by petitioner.

Witnesses Ma. Consuelo Serrano, petitioner's Comptroller during the course of the audit of petitioner's tax liabilities for taxable year 2000, and Atty. Marifloss S. Alilio, petitioner's former Corporate Accounting Manager, testified that petitioner did not receive any FAN, FLD or Details of Discrepancies for the alleged deficiency taxes of petitioner for taxable year 2000 from respondent.[53]

Petitioner has repeatedly denied receipt of the FAN – in its response letter to the Preliminary Collection Notice,[54] and in the Petition for Review[55] and the Memorandum[56] filed before the Court. Such direct denial shifted the burden upon respondent to prove that the FAN was indeed received by petitioner. In this, respondent miserably failed.

The attachment of the FAN to the Preliminary Collection Letter[57] served on petitioner cannot be considered as a valid notice to petitioner of the fact and law on which the assessment was made.

Based on the evidence presented by petitioner, the FAN attached to the Preliminary Collection Letter does not include the alleged FLD and Details of Discrepancies of the tax assessment for taxable year 2000. This was also mentioned in the assailed Decision, respondent noting that petitioner received the FAN together with the Collection Letter, *sans* the Details of Discrepancies.[58] There was also no showing that respondent opposed petitioner's allegation that the FAN attached to the Preliminary Collection Letter did not contain the facts and the law on which the assessment was based.

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[53] Exhibits "WW" and "XX", docket, vol. II, pp. 556-571 and 668-674.
[54] Exhibit "D", docket, vol. II, p. 852.
[55] Docket, vol. I, pp. 1-33.
[56] Docket, vol. V, pp. 2309-2350.
[57] Exhibits "C" to "C-6", docket, vol. II, pp. 845-851.
[58] Exhibit "9", BIR Records, pp. 1304-1313.

Thus, the requirement of informing the taxpayer of the facts and the law on which the assessment was based, provided under Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99, was not satisfied by respondent.

In *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue,*[59] the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment, to wit:

> x x x It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, **due process requires at the very least that such notice actually be received**. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**." (*Emphasis supplied*)

In the present case, no valid notice of assessment was sent to petitioner. Petitioner was denied its right to due process as it was not properly informed of the basis of its tax liabilities. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[60] An invalid assessment bears no valid fruit. Hence, respondent also violated petitioner's right to due process when he issued the Preliminary Collection Notice[61] dated April 13, 2004 and the Warrant of Distraint and/or Levy.[62]

Consequently, respondent's allegation that the FAN dated January 23, 2004 already attained finality for failure of petitioner to protest the same is devoid of merit. Petitioner cannot be expected to protest the FAN without receiving the same and being properly informed of the basis of the assessment.

[59] G.R. No. 155541, January 27, 2004.
[60] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.
[61] Exhibit "10", BIR Records, p. 1257.
[62] Exhibit "16", BIR Records, p. 789.

Considering that no valid notice of assessment was sent to petitioner, the assessment against petitioner for its alleged tax liabilities for taxable year 2000, based on the FAN dated January 23, 2004 must be cancelled.

With the foregoing findings, the Court deems it unnecessary to resolve the remaining stipulated issues.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Thus, the assailed Decision of respondent dated August 17, 2010 upholding the Final Assessment Notice dated January 23, 2004 is **REVERSED** and **SET ASIDE**. Accordingly, the assessment against petitioner for deficiency income tax, deficiency value-added tax, deficiency expanded withholding tax, deficiency documentary stamp tax, and compromise penalty for taxable year 2000 is hereby **CANCELLED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice