Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SVI TECHNOLOGIES, INC.,
Respondent.

CTA EB No. 1304
(CTA Case No. 8488)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 24 2016 10:06 a.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Commissioner of Internal Revenue, seeking to reverse and set aside the Decision[2] (Assailed Decision) dated February 2, 2015 and Resolution[3] (Assailed Resolution) dated April 15, 2015, both rendered by the CTA Third Division in CTA Case No. 8488.

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

[1] *En Banc* Rollo, pp. 5-14
[2] Annex "A" to the Petition for Review, Ibid., pp. 16-35.
[3] Annex "B" to the Petition for Review, Id., pp. 37-38.
[4] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues, Division Docket (Vol. I), p. 134.

Respondent SVI Technologies, Inc., (SVI) on the other hand, is a corporation organized and existing under the laws of the Philippines with office address at 6th Floor JMT Building, 27 ADB Avenue, Ortigas Center, Pasig City.[5]

The facts of the case, as narrated in the Assailed Decision, are as follows:

> "3. Petitioner [respondent herein] received Letter of Authority No. 00009340 dated September 7, 2007 ('Letter of Authority') from the Bureau of Internal Revenue ('BIR'), authorizing the examination of petitioner's books of accounts and other financial records for all internal revenue taxes for taxable year 2006.
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> 4. On May 5, 2009, petitioner received a Notice for Informal Conference dated April 24, 2009 ('Notice for Conference') from RDO No. 43. The Notice for Conference, pursuant to the Letter of Authority, informed petitioner of its supposed deficiency income tax, value-added tax ('VAT'), expanded withholding tax ('EWT') and withholding tax on compensation ('WTC') liabilities for taxable year 2006.
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> 5. On December 18, 2009, petitioner received a Preliminary Assessment Notice ('PAN'), dated December 3, 2009, from Mr. Jonas P. Amore, the Officer-in-Charge, Assistant Regional Director of BIR Revenue Region No. 7. The PAN informed petitioner of its alleged deficiency income tax, VAT, EWT and WTC liabilities amounting to P51,431,505.62, inclusive of interest.
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> 6. Petitioner replied to the PAN through a letter dated January 6, 2010 ('Reply') addressed to Mr. Antonio F. Montemayor, the Regional Director of BIR Revenue Region No. 7, which respondent received on January 8, 2010.
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> 7. On March 12, 2012, more than two (2) years after petitioner received the PAN, petitioner received a Final Notice Before Seizure ('Final Notice') from Mr. Florante Aninag, the Revenue District Officer of RDO No. 43A of East Pasig City, reiterating the alleged tax

[5] Par. 1, Ibid.

deficiencies of petitioner. Attached to the Final Notice was a Preliminary Collection Letter ('PCL').

8. Based on the PCL received by petitioner, there is allegedly due from petitioner, for taxable year 2006, deficiency taxes in the aggregate amount of P49,213,751.63, exclusive of interest, as follows:

Income Tax	
Basic	P 5,769,167.83
Interest	3,240,217.55
Subtotal	P 9,009,385.38
Value-Added Tax	
Basic	P 24,909,885.79
Interest	15,082,424.00
Subtotal	P 39,992,309.79
Withholding Tax — Expanded	
Basic	P 131,633.69
Interest	80,422.77
Subtotal	P 212,056.46
TOTAL	**P 49,213,751.63**

9. On April 12, 2012, petitioner received the now assailed Warrant of Distraint and/or Levy ('WDL'), which sought to distrain and/or levy the personal and/or real property of petitioner for the collection of the alleged deficiency income tax, VAT and EWT in the aggregate amount of P49,213,751.63.'

Thus, petitioner filed on May 11, 2012 its Petition for Review, praying that the Court declare petitioner not liable for the alleged deficiency income tax, VAT and EWT for taxable 2006, and that the assailed Warrant of Distraint and/or Levy be withdrawn and cancelled.

On June 13, 2012, respondent [petitioner herein] filed her Answer, interposing the following Special and Affirmative Defenses:

'SPECIAL AND AFFIRMATIVE DEFENSES

4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

5. All presumptions are in favor of the correctness of the Assessment and the manner by which it was arrived at including the issuance of the Warrant of Distraint and Levy. Petitioner was accorded due process in the conduct of the investigation of its internal revenue tax;

6. Herein petitioner is presumed to have received the Final Assessment Notice, Formal Letter of Demand and Details of Discrepancies. As such, he is presumed to have been fully apprised of the facts and the law upon which the Final Assessment was based;

    6.1. Respondent maintains that [p]etitioner was informed that based on the verification conducted by the examiner concerned, it failed to subject the following income payments to withholding taxes as required under Revenue Regulations No. 2-98: a) cost of services and operating expenses amounting to P1,343,865.90; b) rent and utilities amounting to P422,913.41, and c) commissions amounting to P836,107.00. Thus, the amounts were disallowed as deductions from the gross income pursuant to Section 34(K) of the NIRC of 1997. Hence, the Deficiency Income Tax of P2,602,886.31;

    6.2. Verification by the examiner concerned, likewise, disclosed that [p]etitioners representation and entertainment expense based on its Financial Statements exceeded the statutory limit. Thus pursuant to Revenue Regulations No. 10-2002, the excess amount totaling P280,480.81 was assessed as a non-deductible representation expense;

6.3. It was already disclosed during verification that income payments subject to withholding tax on compensation amounting to P3,409,142.29 was not fully reported in the financial statements and were considered as unaccounted source of cash which led to the inference that part of petitioners income were not declared as enunciated in the case of Perez vs. CTA & CIR, L-10507;

6.4. Petitioner, based on verification, failed to establish the basis used in the computation of claimed depreciation. Thus, pursuant to Section 34(F) of the NIRC of 1997, as amended, the amount of P3,272,047.00 was disallowed;

6.5. Verification also disclosed that petitioner failed to submit adequate documentary evidence to support its claimed Net Operating Loss Carry-Over. Hence, the amount of P6,361,485.00 was disallowed pursuant to Section 34(D)(3) of the NIRC of 1997, as amended;

6.6. Petitioner, as disclosed during verification, failed to submit adequate documentary evidence to support the claimed infrastructure expense amounting to P586,294.00. Hence, said amount was disallowed pursuant to Section 34(A) of the NIRC of 1997, as amended;

6.7. As to Value Added Tax, it was disclosed that the amount of P27,164,233.00 representing taxable sales/receipts and other income were not subjected to VAT and therefore assessed pursuant to Sections 106 and 108 of the NIRC of 1997, as amended;

6.8. It was also disclosed that the income payments subject to withholding tax on compensation amounting to P3,409,142.29 was not fully reported in the financial statements and were considered as unaccounted income subject to VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended;

6.9. Petitioner, based on verification, failed to submit the necessary documentary evidence on the claimed tax credits per VAT returns. Hence, the amount of P21,003,197.68 was disallowed pursuant to Sections 110, 113 and 237 of the NIRC of 1997, as amended Revenue Regulations No. 28-03;

6.10. Verification, likewise, disclosed that [p]etitioner failed to subject following income payments to withholding taxes as required under Revenue Regulations No. 2-98: a) cost of services and operating expenses amounting to P1,343,865.90; b) rent and utilities amounting to P422,913.41, and c) commissions amounting to P836,107.00. Thus, the amounts were assessed as deficiency Expanded Withholding Tax;

6.11. The amount of P2,096,763.72 was assessed pursuant to Revenue Regulations No. 2-98 as under remittance on Withholding Tax on Compensation.

7. The Assessment has already become Final and Demandable. Not only are the Notice of Assessment, Formal Letter of Demand and Details of Discrepancies which were issued by the Assessment Division and received by the Post Office on January 4, 2010 presumed to have been received by the [p]etitioner, but

also, Petitioner failed to establish and supplement its claim that it did not receive the aforementioned documents. Thus, [p]etitioner is deemed to have waived its right to protest the assessment within the Statutory period of thirty (30) days as provided for under Section 228 of the NIRC of 1997, as amended, which provides:

'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 a form and manor as may be prescribed by the 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'

8. Taxpayer must establish by sufficient and competent evidence that its petition is valid and binding;'

On July 4, 2012, petitioner filed a Comment/Opposition [To Respondent's Manifestation with Motion to Admit Attached Answer dated June 13, 2012].

On November 13, 2012, the parties filed their Joint Stipulation of Facts and Issues, and thus a Pre-Trial Order was issued on November 27, 2012.

On January 11, 2013, petitioner filed its Formal Offer of Evidence, which was resolved by the Court on February 14, 2013.

On the other hand, respondent filed her Formal Offer of Evidence on August 6, 2013. In response, petitioner filed a Comment (on Respondent's Formal Offer of Evidence August 2, 2013).

On September 26, 2013, the Court issued a Resolution on respondent's Formal Offer of Evidence, as well as ordering the parties to file simultaneously within thirty (30) days their respective memorandum.

On October 1, 2013, respondent filed a Motion for Reconsideration (Resolution of 26 September 2013), praying that the denied exhibits be admitted.

Meanwhile, petitioner filed its Memorandum on October 29, 2013.

On January 17, 2014, the Court issued a Resolution granting the Motion for Reconsideration (Resolution of 26 September 2013).

On January 29, 2014, respondent filed its Memorandum.

Thus on February 5, 2014, the Court promulgated a Resolution submitting the case for Decision."[6]

In a Decision[7] promulgated on February 2, 2015, the Third Division of this Court granted SVI's Petition for Review, the *fallo* of which reads:

> "**WHEREFORE,** the Petition for Review dated May 11, 2012 is hereby **GRANTED.** The Formal Assessment Notice, with attached Details of Discrepancies and Assessment Notices, dated January 4, 2010; the Final Notice Before Seizure dated March 12, 2012; and the Warrant of Distraint and/or Levy dated April 12, 2012, are hereby **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**"

Aggrieved, CIR filed a Motion for Reconsideration (Notice of Decision promulgated on February 2, 2015)[8] on February 20, 2015, which was denied by the Court in Division in a Resolution[9] promulgated on April 15, 2015, for lack of merit.

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[6] The Facts, Decision dated February 2, 2015, Annex "A" to the Petition for Review, *En Banc Rollo*, pp. 17-23.
[7] Supra note 2.
[8] Division Docket (Vol. II), pp. 681-685.
[9] Supra note 3.

Undeterred, CIR filed her Petition for Review[10] before the CTA Court *En Banc* on May 21, 2015, with SVI's Comment [on Petition for Review dated May 20, 2015][11], filed on August 10, 2015.

Giving due course to the Petition, the Court *En Banc* ordered both parties to submit their Memoranda within thirty (30) days from receipt of the Resolution[12] promulgated on September 4, 2015.

On November 12, 2015, the case was submitted[13] for decision, taking into consideration CIR's Memorandum[14] filed on October 13, 2015 and Memorandum for Respondent[15] filed on October 26, 2015.

Hence, this Decision.

In the case at bench, CIR raised this sole ground/issue for the consideration of this Court:

> "The Third Division of the Honorable Court of Tax Appeals erred in cancelling and setting aside the Final Assessment Notice with Details of Discrepancies, the Final Notice Before Seizure and the Warrant of Distraint and/or Levy, in its Decision dated February 02, 2015 because there was a valid service of the Assessment Notices, and the assessments have not prescribed, contrary to the allegation of respondent"

CIR contends that there was a valid service of the Formal Letter of Demand, with Details of Discrepancies and Assessment Notices (FAN/FLD) dated January 4, 2010, since the same was mailed correctly to the business address of SVI, as attested by Mr. Arnold Larrosa who was then officially in charge of the mailing matters of Revenue Region No. 7, Quezon City.

CIR further claims that the delivery and mailing of FAN/FLD against SVI for taxable year 2006 was sufficiently proven by a Certification issued by the Pasig City Central Post Office stating that "based on records, Registered Mail No. 46 addressed to SVI Technologies, Inc. of 6/F JMT Corporate Condo, 27 ADB Avenue, Ortigas Ctr., Pasig City posted on January 4, 2010 was delivered by letter carrier

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[10] See footnote no. 1.
[11] En *Banc Rollo,* pp. 50-61.
[12] Ibid, pp. 69-70.
[13] Resolution dated November 12, 2015, *En Banc Rollo,* pp. 99-100.
[14] Ibid., pp. 71-79.
[15] Id., pp. 84-96.

El Nodel[16] Masagca and duly received by S/G Macavinta Jr. on January 12, 2010."

Furthermore, CIR emphasizes that the Preliminary Assessment Notice was also sent thru registered mail and was not denied to have been received by SVI. She further adds that the same was likely received also by a security guard, who would have refused receipt of the BIR's notices from the letter carrier/post man if he/she was not given the responsibility of receiving mail matters on behalf of the addressee.

CIR also states that since the FAN/FLD was duly issued and mailed within the prescriptive period of the assessment, the same should, therefore, be considered valid and to have reached finality when it was not timely protested by SVI. Accordingly, under Sections 205 and 207 of the 1997 National Internal Revenue Code, as amended (1997 NIRC, as amended), CIR may resort to summary remedies available to her in collecting delinquent accounts. Thus, the issuance of Warrant of Distraint and Levy (WDL) against SVI is in order.

In its Comment, SVI argues that the issuance of the WDL was null and void since it never received a FAN/FLD for its purported tax liabilities; that CIR miserably failed to adduce competent evidence that would establish SVI's alleged receipt of the FAN/FLD; and, that since there was no valid service of FAN/FLD, the period to assess internal revenue taxes for taxable year 2006 has already prescribed. Consequently, CIR is precluded from enforcing collection of any alleged tax deficiencies for taxable year 2006.

The Petition is bereft of merit.

After taking a second hard look on the evidence presented by the CIR, We find that the latter failed to sufficiently establish that the FAN/FLD dated January 4, 2010, was duly received by SVI in accordance with law and implementing rules and regulations.

It is explicitly required under Section 228 of the 1997 National Internal Revenue Code, as amended, that a taxpayer shall be informed in writing of the law and the fact upon which the assessment is based; otherwise such assessment shall be invalid.

In relation thereto, Section 3.1.4 of Revenue Regulations No. 12-99 requires the sending of FAN/FLD by CIR and the receipt thereof by

[16] Should be Rodel, Exhibit "12".

the taxpayer as part of due process requirement in the issuance of a deficiency tax assessment, to wit:

> "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."

The use of the word "shall" in the foregoing provisions indicates the mandatory nature of the requirements laid down therein.[17]

Apart from the foregoing, it is necessary that the letter mailed must be served on the addressee or a duly authorized agent of the addressee.[18]

In this case, SVI denies receiving the FAN/FLD dated January 4, 2010, sent by respondent *via* registered mail. Thus, it is incumbent upon CIR to prove that the same was validly served and duly received by SVI, pursuant to the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* [19] citing the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[20], which provides:

> "Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from

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[17] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515. July 2, 2014.

[18] Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc., CTA EB No. 1006 (CTA Case No. 8132), November 10, 2014, citing the case of People of the Philippines v. Joseph Typingco, CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.

[19] G.R. No. 185371, December 8, 2010.

[20] G.R. No. 157064, August 7, 2006.

> 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 x x x."

To convince the Court in Division of the actual receipt by petitioner of the subject FAN/FLD, CIR offered the following documentary evidence:

"Exhibit No.	Description	Purpose
'10'	Certification on the mailing of the Final Assessment Notice of SVI Technologies dated February 6, 2013 issued by BIR Revenue Region No. 7, Quezon City	To prove that the FAN dated January 4, 2010 addressed to SVI Tech. Inc., at 6/F Corp. Condo No. 27 ADB Avenue, Pasig City was duly mailed by registered mail under Registry No. 46 on January 12, 2010.
'11'	Certified True Copy of Endorsement	To prove that the FAN Addressed to SVI Technologies, Inc. was received by the Administrative Division for mailing on January 4, 2010
'12'	Certificate from the Post Office	To prove that Registry Mail No. 46 addressed to SVI Technologies Inc., was delivered by letter carrier El Rodel Masagca on January 12, 2010.
'17'	Certified True Copy of the original page in the delivery	To prove that Registry No. 46 was duly mailed

	book of Pasig City Central Post Office for the period January 12, 2010	on January 12, 2010 by[21] SG Macavinta, guard on duty.

While the foregoing Certifications may have proven the fact of mailing via registered mail of the subject FAN/FLD, no evidence was, however, submitted by the CIR proving that the same had been actually served and received by petitioner or by its duly authorized agent.

In fact, CIR failed to establish that "S/G Macavinta, Jr." who received the said FAN/FLD on January 12, 2010[22], was duly authorized by SVI to receive the same in its behalf.

It likewise bears noting that CIR's witness, Mr. Arnold C. Larrosa[23], Administrative Aide II of Revenue Region No. 7, Quezon City, categorically admitted during his cross-examination that he has no personal knowledge on whether the subject mail matter (FAN/FLD dated January 4, 2010) in this case was actually delivered to the addressee or the latter's duly authorized representative since he merely delivered said notice to the Post Office for mailing. Pertinent portions of his testimony are herein quoted below:

"ATTY. HUANG
Q Mr. Witness, you said in question and answer no. 5 of your judicial affidavit, you mentioned that you were in charge of all the mailing matters of the BIR Revenue Region no. 7 as well as the messengerial duties, is that correct?

MR. LARROSA
A Yes, Ma'am.

ATTY. HUANG
Q In question and answer no. 7, you mentioned that you were the one who put the letters and notices inside window envelopes and after which you personally to go the Post Office to mail them thru registered mail?

MR. LARROSA
A Yes, Ma'am.

[21] Should be "and duly received".
[22] Par. 13, Judicial Affidavit of Arnold C. Larrosa, Division Docket (Vol. I), p. 458.
[23] Minutes of the Hearing dated June 17, 2013, Division Docket (Vol. I), p. 466.

ATTY. HUANG
Q Is that correct to say that your knowledge of the delivery of these notices are up the Post Office in sending them thru registered mail?

MR. LARROSA
A Yes, Ma'am.

ATTY. HUANG
Q In connection with this case, is it correct to say that you have no personal knowledge whether or not the mail matters involved were actually delivered by authorized representative, competent to receive the same?

MR. LARROSA
A Yes, Ma'am."[24]

In the same vein, CIR's witness, Mr. Virgilio A. Martinez[25], Administrative Officer/Postal Service Officer of the Pasig City Central Post Office, testified that he did not personally deliver the subject mail matter since his role then, as "Letter Carrier-Supervisor", was limited to overseeing that all mail matters, registered and ordinary, were delivered on time by their letter-carriers or mailmen.[26] The significant parts of his testimony are hereunder quoted for ready reference:

"ATTY. HUANG

Q Mr. Witness, in question and answer no. 5, you mentioned that in your personal knowledge as to whether or not the registered mail is delivered or not is based on a logbook and at times in the inspection of the lockers of the letter carrier, is this correct?

MR. MARTINEZ

A Yes, Ma'am.

ATTY. HUANG

Q Is it correct to say that based on this, your only involvement in the mail matter is to supervise, check the

[24] Pages 7-8 of the Transcript of Stenographic Notes Taken During the Hearing Held on June 17, 2013.
[25] Minutes of the Hearing dated July 22, 2013, Division Docket (Vol. I), p. 481.
[26] Par. 3, Judicial Affidavit of Mr. Virgilio A. Martinez, Ibid., pp. 556-557.

deliveries, and you did not personally deliver the mail matters?

MR. MARTINEZ

A Yes,Ma'am.

x x x x x x x x x

JUSTICE VICTORINO

In this particular case, the subject letter was received by the Security Guard of the building occupied by the addressee?

MR. MARTINEZ

Yes, Your Honor.

JUSTICE VICTORINO

How do you know if the said letter ever reached the addressee?

MR. MARTINEZ

Yun po ang sabi ng kartero, dinadala ng Security Guard dun sa mga addressee nila dahil sila bawal.

JUSTICE VICTORINO

Nakita po ba ng kartero na dinala dun sa addressee?

MR. MARTINEZ

Iniwan ng kartero, iniiwan lang nila.

JUSTICE VICTORINO

So, they just leave sa inyo po, iniiwan lang nila doon sa Security Guard, pagkatapos non wala na silang alam?

MR. MARTINEZ

Wala na pong alam.

JUSTICE VICTORINO

In this particular case, ganoon po ba ang nangyari?

MR. MARTINEZ

Hindi ko po alam, basta based on the records, nakatiyak na sya na nadeliver dun sa building.

JUSTICE LIBAN

You do not know what happened to the letter because you yourself did not actually deliver the said letter?

MR. MARTINEZ

Yes, Your Honr. [sic]

JUSTICE LIBAN

And the one who actually delivered the letter can no longer testify because he is AWOL or Absence Without Leave?

MR. MARTINEZ

Yes, Your Honor, AWOL nap o."[27]

Evidently, CIR failed to satisfactorily discharge its burden of proving that she was able to strictly comply with the requirements set forth under Section 228 of the NIRC of 1997 and RR No. 12-99 in serving the FAN/FLD. By such reason, CIR violated SVI's right to due process when she issued the subject WDL without giving any valid notice of assessment to petitioner. An invalid assessment bears no valid fruit. 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.[28]

In light of the foregoing, the Court *En Banc* agrees with the findings of the Court in Division that, in the absence of a valid service of

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[27] Pages 11, 17, 18 and 19 of the Transcript of Stenographic Notes Taken During the Hearing Held on July 22, 2013.
[28] Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc., G.R. No. 198677, November 26, 2014.

the questioned Formal Letter of Demand, with Details of Discrepancies and Assessment Notices dated January 4, 2010, the subject deficiency assessments cannot be considered as final, executory and demandable. By such reason, the Final Notice Before Seizure dated March 12, 2012 and the Warrant of Distraint and/or Levy dated April 12, 2012, issued against SVI must be cancelled.

Finding no reversible error, the Court *En Banc* affirms the Assailed Decision dated February 2, 2015 and the Assailed Resolution dated April 15, 2015, both rendered by the CTA Third Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED**, for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1304** **CTA CASE No. 8488**
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
SVI TECHNOLOGIES, INC., *Respondent.*	Promulgated: MAY 24 2016 10:06 a.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With all due respect, I manifest my dissent with the *ponencia* in denying the Petition for Review for lack of merit which thereby upholds the Court in Division's cancellation of the Formal Assessment Notice (FAN) dated January 4, 2010, Final Notice Before Seizure dated March 12, 2012, and the Warrant of Distraint and Levy (WDL) dated April 12, 2012.

The *ponencia* ruled that petitioner Commissioner of Internal Revenue (CIR) failed to establish that the FAN dated January 4, 2010 and the Formal Letter of Demand (FLD) with attached Details of Discrepancies was duly received by SVI Technologies, Inc. (SVI) in accordance with law and implementing rules and regulations.

I cannot share the *ponencia*'s conclusion that the CIR failed to discharge the burden of proving compliance with the requirements under Section 228 of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended in relation to Revenue Regulation No. 12-99 in serving the FAN/FLD. On the contrary, the evidence on record show that the FAN/FLD was duly served upon respondent in the ordinary course of the mail. Parenthetically, the following documents duly presented and admitted in evidence significantly confirm receipt of the FAN/FLD by the respondent:

Exhibit	Description
9	Judicial Affidavit of Arnold Larrosa
9-a	Signature of Arnold Larrosa
10	**Certification on the mailing of the Final Assessment Notice of SVI Technologies**
11	Certified True Copy of Endorsement
12	Certificate from the Post Office
16	**Judicial Affidavit of Virgilio A Martinez**
16-a	**Signature of Virgilio A. Martinez**
17	**Certified True Copy of the original page in the delivery book of Pasig City Central Post Office for the period January 12, 2010**

There is no denying that respondent's office address is located at 6th Floor JMT building, 27 ADB Avenue, Ortigas Center, Pasig City[1] and that the FAN/FLD was sent via registered mail to respondent at the aforestated address. The Certification[2] issued by Mr. Virgilio A. Martinez, the LC-Chief Supervisor of the Pasig City Central Post Office, is categorical in showing that Registered Mail No. 46 containing the FAN/FLD was properly addressed to respondent and that Security Guard Macavinta, Jr. of the building where respondent holds office received the mail. Truth to tell, while the mail matter was never returned to the sender, Section 3 (v), Rule 131 of the Rules of Court provides:

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[1] Par.1, Stipulation of Facts, Joint Stipulation of Facts and Issues, Division Docket (Vol. 1), p. 134.
[2] Exhibit "12".

RULE 131
Burden of Proof and Presumptions

> xxx xxx xxx
>
> **Section 3.** *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail;

Although I am aware that Section 3 (v), Rule 131 of the Rules of Court is merely a disputable presumption, and a direct denial of receipt by taxpayer shifts the burden upon the party favored by the presumption as declared in the *Barcelon* case[3], I submit that the circumstances of the present case do not justify the conclusion that respondent's bare denial was sufficient to overcome the presumption that respondent actually received the FAN/FLD. Note that in the *Barcelon* case, the assessment notice was also allegedly sent to the taxpayer via registered mail. The Supreme Court, however, did not sustain the presumption that the assessment notice was received in the regular course of mail in view of the CIR's failure to present convincing evidence showing that such notice was actually mailed. The BIR merely presented the **BIR logbook** in support of its claim that the assessment notice was mailed and sent to the taxpayer.

In contrast, the present case involves a situation where the FAN/FLD was actually received by the security guard of the building where respondent holds office. The manner by which the FAN/FLD was delivered has been narrated in detail. *First*, Mr. Arnold C. Larossa, the Administrative Aide II who is in charge of all mailing matters of BIR, Revenue Region No. 7, Quezon City,[4] confirmed that a copy of the endorsement of the FAN of respondent was stamped "received" by the post office. *Second*, Mr. Virgilio A. Martinez, the LC-Chief Supervisor of the Pasig City Central Post Office, testified that while he did not personally deliver the mail matter, as his role was limited to overseeing that all the mail matters were delivered on time by their mailmen, **their records, however, disclose that the mail matter involved in this case was actually received by the**

[3] G.R. No. 157064, August 7, 2006.
[4] Judicial Affidavit of Arnold C. Larossa, Division Docket, p. 537.

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security guard of the building occupied by the addressee on January 12, 2010. *Third*, the receipt by the aforestated security guard was the only way by which delivery of the mail could be effected as proceeding to the exact unit in the building where the addressee holds office is prohibited.[5]

Indeed, to rebut the presumption that the mail matter was not received by the addressee, respondent should have at the very least presented evidence showing that its office is not located at 6^{th} Floor JMT building, 27 ADB Avenue, Ortigas Center, Pasig City; or that the mail matter was sent to an address different from the aforestated address where it holds office; or that the security guard did not have authority to receive mail matters addressed to the building tenants; and finally, that there existed no policy prohibiting letter carriers from directly making deliveries of mail matters to building tenants. To sustain the position that mere self-serving and blanket denial of receipt of FAN/FLD despite the scenario where a messenger or a mailman is not allowed to go to the units of building tenants would thwart the service of official communications quite so conveniently while rendering helpless government officials in notifying affluent individuals staying in posh commercial or residential establishments. The law should not require the impossible in complying with a procedural mandate on due process.

Accordingly, I humbly submit that the totality of evidence presented by respondent is too scant and insufficient to rebut the presumption that it received the FAN/FLD which petitioner sent to it by registered mail. Respondent's failure to file a protest against the FAN/FLD within the reglementary period pursuant to Section 228 of the NIRC of 1997, as amended made the same final, executory and demandable by operation of law.[6] Not being a "disputed assessment,"

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[5] Transcript of Stenographic Notes Taken During the Hearing Held on July 22, 2013, pp. 16-21.

[6] Section 228 of National Internal Revenue Code of 1997, as amended in relation to Revenue Regulation No. 12-99, which provides:

"Section 228. *Protesting of Assessment*. 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."

the Court has no jurisdiction to resolve the correctness of the assessment since the Court's jurisdiction is limited only to review disputed assessments under Section 7 (a)(1) of Republic Act No. (RA) 1125, as amended by RA No. 9282.

All told, I **VOTE** to **GRANT** the Petition for Review filed by the Commissioner of Internal Revenue, **REVERSE** and **SET ASIDE** the Decision and Resolution of the CTA Third Division dated February 2, 2015 and April 15, 2015, respectively and **UPHOLD** the Formal Assessment Notice and Formal Letter of Demand with attached Details of Discrepancies dated January 4, 2010.

ROMAN G. DEL ROSARIO
Presiding Justice

"Revenue Regulation No. 12-99

xxx xxx xxx

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1.5 Disputed Assessment. — xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable."