REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

***EN BANC***

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **C.T.A. E.B. NO. 388** **(C.T.A. CASE NO. 6605)** |
| | Present: |
| - versus - | **ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.* |
| **KITA CORPORATION,** Respondent. | **Promulgated:** OCT 24 2008 2:40 p.m. |

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# DECISION

***UY, J.:***

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on May 15, 2008 under Republic Act No. 1125, as amended by Republic Act No. 9282, and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) which granted the Petition for Review in CTA Case No. 6605, entitled "Kita Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent",[1] to wit:

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[1] Ponencia of Associate Justice Caesar A. Casanova, First Division, concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

1) Decision promulgated on August 9, 2007[2] granting the Petition for Review in CTA Case No. 6605 and accordingly canceling and withdrawing herein petitioner's assessment against herein respondent for deficiency income tax in the amount of THIRTEEN MILLION SIX HUNDRED TWENTY NINE THOUSAND TWELVE AND 94/100 PESOS (P13,629,012.94) due to prescription; and

2) Resolution promulgated on April 11, 2008[3] denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

## THE FACTS

The factual antecedents of the case, as found by the Court in Division, are as follows.

Petitioner is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with authority to carry out the functions, duties and responsibilities of said Office, including, *inter alia*, the power to decide disputed assessments, cancel, and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) and other tax laws, rules and regulations. Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with business address at Building No. 7171, corner El and Elmore Streets, Clark Special Economic Zone, Angeles City, Pampanga.

Respondent is registered with the Clark Development Corporation (CDC) under the Bases Conversion and Development Act of 1992 (Section 15 of Republic Act No. 7227, Section 5, of Executive Order No. 80 and Proclamation No. 163), as a Clark Special Economic Zone (CSEZ) enterprise primarily engaged in the business of manufacturing consumer electronic

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[2] Docket, pp. 37-49.
[3] Ibid., at pp. 50-52.

products. As a registered CSEZ enterprise, respondent is entitled to tax and duty free importation of raw materials, equipment, household and personal items, and is exempted from national and local taxes. However, respondent is liable to pay a final tax of 5% based on gross revenues less allowable deductions as defined under the Act.

On April 15, 1999, respondent filed its 1998 income tax return with METROBANK, Angeles Branch, a duly authorized agent bank of the Bureau of Internal Revenue (BIR) and paid 5% final income tax of P6,714,943.00 on taxable income of P134,298,865.00.

On October 22, 1999, Letter of Authority No. 46518 was issued by the Regional Director of Revenue Region No. 4, San Fernando, Pampanga, authorizing the examination of the books of accounts and other accounting records of respondent relative to its internal revenue taxes for taxable year 1998.

On November 6, 2001, respondent received a letter from Mr. Liberato L. Navarro, Revenue District Officer of Revenue District Office (RDO) No. 21, San Fernando, Pampanga, informing respondent that a report of investigation on its 1998 internal revenue tax liabilities has been submitted finding it liable for deficiency income and expanded withholding taxes in the respective amounts of P13,686,100.00 and P516,917.67.

On April 30, 2002, respondent received a Preliminary Collection Letter from the BIR, alleging that for the taxable year ended December 31, 1998, respondent has an outstanding income tax liability, inclusive of increments, in the amount of P13,629,012.94 per Assessment/Demand No. 021-98-41B-000675 issued on February 6, 2002. However, respondent denies receiving

124

the Assessment Notice/Formal Letter of Demand referred to in the Preliminary Collection Letter.

On May 15, 2002, respondent received from petitioner a Final Notice Before Seizure dated May 14, 2002, reiterating the demand for the payment of the alleged 1998 deficiency income tax liability of P13,629,012.94.

On May 29, 2002, respondent, through the Tax Division of Sycip Gorres Velayo & Co., filed an administrative protest against the subject deficiency income tax assessment with the BIR's Revenue Region No. 4, San Fernando, Pampanga. Due to petitioner's inaction on its protest, respondent elevated its case before the Court in Division on February 21, 2003 and was docketed as C.T.A. Case No. 6605 entitled "Kita Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent".

After trial on the merits, the Court in Division rendered its Decision dated August 9, 2007, the dispositive portion of which states:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent's (herein petitioner's) assessment against petitioner (herein respondent) for deficiency income tax in the amount of P13,629,012.94 for taxable year 1998 is hereby **CANCELLED and WITHDRAWN** due to prescription.
>
> **SO ORDERED.**"

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for Reconsideration of the aforesaid Decision in the Resolution dated April 11, 2008.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision and Resolution dated August 9, 2007 and April 11, 2008,

124

respectively, of the Court in Division be set aside, and declare petitioner's assessment against respondent for deficiency income tax in the amount of P13,629,012.94 for taxable year 1998 as valid and assessed within the prescribed period provided by law.

On June 4, 2008, this Court issued a Resolution[4] requiring respondent to file a Comment to the instant Petition for Review. Respondent filed a Motion for Extension of Time to File Comment and was granted by this Court a final and non-extendible period of fifteen (15) days or until July 5, 2008 in a Resolution dated June 20, 2008.[5] Upon submission of respondent's Comment,[6] the Court issued a Resolution dated July 14, 2008[7] giving due course to the instant petition and requiring both parties to submit their memoranda within the period of thirty (30) days from notice.

After both parties filed their respective Memorandum on August 13, 2008[8] and August 14, 2008,[9] this case was deemed submitted for decision in a Resolution dated August 26, 2008.

Hence, this Decision.

## THE ISSUES

The issues based on the grounds raised by petitioner in the instant petition are as follows:

A. Whether or not the issuance of the assessment against respondent is already barred by prescription; and

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[4] Id., at pp. 55-58.
[5] Id., at p. 62.
[6] Id., at pp. 63-74.
[7] Id., at pp. 75-77.
[8] Id., at pp. 78-100.
[9] Id., at pp. 101-118.

B. Whether or not respondent is liable for deficiency income tax liability in the amount of P13,629,012.94.[10]

As the issues are inter-related, these could be jointly summarized as follows: whether or not respondent duly received the PAN, FAN and FLOD sent by petitioner which would give legal basis to hold it liable to pay deficiency income tax assessed in the amount of P13,629,012.94.

***Petitioner's Arguments:***

Petitioner submits that the subject Preliminary Assessment Notice (PAN), Formal Assessment Notice (FAN), and the Formal Letter of Demand (FLOD) were duly received by respondent in the regular course of mail, applying the provisions of Section 3(v), Rule 131 of the Revised Rules of Court, and citing the cases of Nava vs. Commissioner of Internal Revenue (G.R. No. L-19470, January 30, 1965), Sebastian vs. Workmen's Compensation Commission (G.R. No. L-42587, February 28, 1978), and Protectors Services, Inc. vs. Court of Appeals and Commissioner of Internal Revenue (G.R. No. 118176, April 12, 2000).

Relative thereto, petitioner points out that the aforesaid presumption of receipt by respondent of said documents was bolstered by the direct testimony[11] of witness Noel Musngi, alleging that the Transmittal Reports dated January 24, 2002[12] and March 13, 2002[13] show sufficient proof that petitioner actually mailed the PAN, FAN, and FLOD to respondent, and the

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[10] Id., at p. 15.
[11] TSN of Hearing dated July 21, 2004, CTA Case No. 6605.
[12] Exhibit "16" (remarked as Exhibit "12" per the Resolution of the First Division dated March 10, 2005), Docket of CTA Case No. 6605, pp. 160-161.
[13] Exhibit "17" (remarked as Exhibit "13" per the Resolution of the First Division dated March 10, 2005), Ibid., at pp. 162-165.

latter indeed received the same as there was no evidence to suggest that the said documents were returned to sender.

And considering that respondent was allegedly able to prepare and file an intelligent letter protest contesting the details of discrepancies found in the FLOD, it may be inferred that respondent duly received the subject PAN, FAN, and FLOD in the regular course of mail. Hence, it is petitioner's belief that respondent's tax liabilities were properly assessed and the reglementary period for filing a protest had commenced from the day of its receipt of the aforesaid documents. Consequently, the assessment has allegedly become final, executory, and demandable for failure of respondent to administratively protest the same within thirty (30) days from its receipt as it merely protested or assailed the Preliminary Collection Letter, and not the FAN.

In addition, petitioner insists that the subject assessment of the instant case is proper for the reason that respondent failed to declare in its income tax return all of its income for taxable year 1998, as there was indeed an underdeclaration of miscellaneous income in the amount of P99,003,590.40.

***Respondent's Counter-arguments:***

Respondent filed its Comment[14] thereto on July 7, 2008 praying for the dismissal of the present petition for being devoid of any factual or legal basis. It argues that: (a) petitioner failed to prove the mailing of the subject Final Assessment Notice (FAN) and Formal Letter of Demand (FLOD) to respondent as the evidence submitted by petitioner was inadequate and incompetent; (b) petitioner's assertion that the intelligent protest letter filed

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[14] Docket, pp. 38-41.

by respondent proves the respondent's receipt of the FLOD is baseless and misleading; and, (c) the subject assessment has not become final and executory as the 30-day reglementary period for the filing of the administrative protest against the deficiency tax assessment had not commenced since petitioner never received the FLOD.

## THE COURT EN BANC'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review readily reveals that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division which had already been exhaustively discussed and passed upon by it in its assailed Decision and Resolution. We thus adhere to the factual and legal findings of the Court in Division that the subject assessment against respondent had not been duly received by the latter so as to make the same final, executory and demandable.

We quote with approval the discussion of the Court in Division on the matter, to wit:

> "Respondent (herein petitioner) relies on the presumption of law that 'a letter duly directed and mailed was received in the regular course of the mail' [Sec. 3 (v), Rule 131 of the Revised Rules of Court].
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> In order for the said presumption to arise, the Supreme Court in the case of ***NAVA, supra*** held that the following facts must first be established: a) that the letter was properly addressed with postage prepaid; and b) that it was mailed. If one of the said facts fails to appear, according to the Supreme Court in the ***NAVA*** case, the presumption does not lie.

In the case at bar, respondent's (herein petitioner's) evidence failed to meet the requirements for presumption to arise. There is nothing on record to show that the disputed assessment notice was in fact mailed or sent to petitioner (herein respondent).

Respondent (petitioner) presented in evidence Transmittal Reports dated January 24, 2002 and March 13, 2002 listing down several names of companies, including herein petitioner (respondent), with their corresponding addresses. Such mailing lists, though stamped as received by the San Fernando Post Office as 'Registered' on the said dates, do not positively identify that the documents mailed on January 24, 2002 and March 13, 2002 were the subject Preliminary Assessment Notice and Formal Assessment Notice/Formal Letter of Demand. Neither could We accept the testimony of respondent's (petitioner in this case) witness, Mr. Musngi, for, as stressed by petitioner (respondent in this case) in its Memorandum, it was merely based on assumptions, xxx

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If indeed, the Preliminary Assessment Notice and Formal Assessment Notice/Formal Letter of Demand were sent to petitioner (respondent herein) through registered mail, respondent (petitioner herein) should have submitted the corresponding registry receipts issued by the Bureau of Posts, or registry return cards which would have been signed by the petitioner (respondent herein) or its authorized representative and if said documents cannot be located, respondent (petitioner herein) at the very least, should have submitted a certification issued by the San Fernando Post Office. Thus, as held by the Supreme Court in the Nava case:

> '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 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.'

> For petitioner's[15] failure to sufficiently prove the fact of mailing of the disputed assessment, the presumption that petitioner (respondent herein) received the subject assessment did not arise in favor of respondent (petitioner herein)."[16]

Apparently, from the foregoing conclusion judiciously arrived at by the Court in Division, herein petitioner failed to sufficiently establish the fact of mailing of the disputed assessment to herein respondent-taxpayer. Therefore, the presumption of law that a letter duly directed and mailed was received in the regular course of the mail now becomes disputable and subject to controversion as held by the Supreme Court in the case of ***Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner***.[17] The High Court said, thus:

> "In *Protector's Services, Inc. v. Court of Appeals,* this Court ruled when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are : (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **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**." *(Emphasis Ours)*

Clearly in the case at bench, respondent consistently denied having received the Final Assessment Notice and Formal letter of Demand; and therefore, Section 3(v), Rule 131 of the Revised Rules of Court, finds no application in the instant case. Said provision reads as follows:

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[15] Should be "respondent's" in CTA Case No. 6605.
[16] Decision dated August 9, 2007, CTA Case No. 6605; Docket, pp. 42-45.
[17] G.R. No. 157064, August 7, 2006.

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

Stated otherwise, when a letter or other mail matter is addressed and mailed with postage prepaid, there is a **rebuttable** presumption of fact that it was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if any one of these elemental facts fail to appear, it is fatal to the presumption.[18]

Applying the foregoing legal provision and taking into consideration the surrounding circumstances in the case at bench, while it is true that the assessment notice and formal letter of demand were allegedly released and mailed by the responsible officer of the BIR to the taxpayer, and the originals thereof were allegedly not returned to the BIR by the postmaster, respondent-taxpayer however directly denies actual receipt thereof, thereby shifting the burden upon the party favored by the presumption (the petitioner in this case) to prove that the mailed letter was received by the taxpayer.[19]

This Court *En Banc* finds the Transmittal Reports[20] presented by herein petitioner during trial in CTA Case No. 6605 (as the respondent therein) insufficient evidence to establish that respondent actually received the subject FAN and FLOD. Such transmittal reports being self-serving, bear no

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[18] Enriquez vs. Sun Life Assurance Co. of Canada, 41 Phil. 269 (1920).
[19] Arnoldus Woodworks International, Inc. vs. The Commissioner of Internal Revenue, et al., CTA Case No. 4269, March 18, 1994 (affirmed by the Court of Appeals in CA-G.R. SP No. 34019, August 31, 1995) citing Republic of the Philippines vs. Court of Appeals and Nielsen and Company, Inc. 149 SCRA 351 (1987).
[20] Supra.

probative value, as these failed to state the nature of the documents supposedly mailed to the respondent; were not accompanied by the corresponding registry receipts issued by the Bureau of Posts, or registry return cards supposedly returned by the postmaster after delivery of subject mail matter/s, duly signed by the supposed recipient, respondent or its authorized representative in the instant case. In the alternative, granting for the sake of argument, that said documents cannot be located, petitioner at the very least, should have submitted a certification issued by the Postmaster of the San Fernando Post Office to that effect. Failing thereon is fatal to petitioner's invoked presumption of regularity in the delivery of mails.

It must be remembered that under our Rules on Evidence, there are procedural requirements that must be followed or resorted to in order to establish receipt of a particular mailed document by the addressee. Unfortunately, the records of this case negate compliance therewith. Mere transmittal records do not prove anything as this is unreliable in proving that indeed the subject final assessment notice and formal letter of demand were sent to and received by the taxpayer as prescribed by law. This is so because transmittal records, by its very nature, do not clearly indicate whether it was indeed the assessment notices and letter of demand that were actually mailed and have no intervention or participation of whatever nature from the taxpayer.

We reiterate, for emphasis what the High Court said in the **Nava** case[21] that mere notations made without the taxpayer's (respondent in this case) intervention, notice, or control, without adequate supporting evidence, cannot

[21] Nava vs. Commissioner of Internal Revenue, G.R. No. L-19470, January 30, 1965.

suffice; otherwise, the taxpayer would be at the mercy of the revenue officers, without adequate protection or defense.

It bears stressing that this Court cannot turn blind on the importance of such notices. Assessment is a notice to the effect that the amount therein stated is due as tax and a demand for the payment thereof. Otherwise put, an assessment contains not only a computation of tax liability, but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to the amount assessed and demanded. It is relevant in the proper pursuit of judicial and extrajudicial remedies to enforce taxpayer's liabilities and certain matters that relate to it. The ultimate purpose of assessment is to ascertain the amount that the taxpayer is to pay.[22] And a tax assessment is deemed made only when said notice is released, mailed or sent to the taxpayer,[23] subject to proof of actual receipt by the taxpayer, in case of controversion or denial.

In the present case, the evidence presented by herein petitioner in C.T.A. Case No. 6605 as respondent therein, is insufficient to convince the Court *En Banc* that the subject Formal Assessment Notice No. 021-98-41B-000675 dated February 6, 2002, was released, mailed, and received by herein respondent-taxpayer, so as to render it final, executory and demandable after the lapse of the thirty (30) day period, from receipt thereof, within which to protest the same without said protest having been filed by the latter within the said period.

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[22] Tupaz vs. Ulep, 316 SCRA 118 (1999).
[23] Basilan Estates, Inc. vs. Commissioner of Internal Revenue, 21 SCRA 17 (1967).

Correspondingly, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated August 9, 2007 and April 11, 2008, respectively.

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

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

***On Leave***
**LOVELL R. BAUTISTA**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII 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 *En Banc*.

**ERNESTO D. ACOSTA**
Presiding Justice