REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

UPSI PROPERTY HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8860

Members:

CASTAÑEDA, JR.,
Chairperson
MANAHAN, *JJ.*

Promulgated:
OCT 30 2018 3:30 pm

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RESOLUTION

MANAHAN, J.:

For resolution is petitioner's *Motion for Reconsideration (of the Decision dated 22 August 2018)* filed on September 7, 2018, with respondent's *Comment (Re: Motion for Reconsideration),* filed through registered mail and received by this Court on October 4, 2018.

Petitioner seeks reconsideration of the Court's Decision promulgated on August 22, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of jurisdiction."

Petitioner primarily contends that the Court has jurisdiction over the subject matter of the Petition for Review because it partakes of the nature of an appeal of a Final Decision on Disputed Assessment (FDDA) issued by respondent and was filed within thirty (30) days from its receipt pursuant to Section 3, Rule 7 of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioner expressed surprise over respondent's arguments against the propriety of the FDDA as the statements contained therein even directed the petitioner to file an appeal with the Court of Tax Appeals in case it disagrees with the findings of respondent relative to the tax assessments issued for fiscal year ended March 2009.

Central to its arguments in favor of jurisdiction is petitioner's theory that the FDDA has effectively superseded the Final Assessment Notices (FANs) on the assumption that the latter have attained finality for failure to file a timely protest. In fine, petitioner argues that any infirmity in the filing of the protest has been effectively obliterated by the fact that the respondent, nevertheless, issued an FDDA (even reducing the taxable amount due), without raising any issues on the timeliness of the filing of the protest. Thus, the FDDA became the focal point of petitioner's appeal to this Court, being a "decision on a disputed assessment" which is clearly within its jurisdiction in accordance with Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments**, refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Petitioner also disagrees with the finding of this Court as to the date when it received the Formal Letter of Demand (FLD) and the FANs and claims that the Court overlooked the evidence it presented to prove receipt of said FLD/FANs on August 16, 2012. It may be recalled that the assailed Decision agreed with respondent CIR that the evidence showed quite clearly that the FLD/FANs were indeed received by the petitioner on July 18, 2012, making its protest which was filed with respondent on September 14, 2012, filed out of time. Petitioner maintains that the Court may have relied heavily on the evidence presented by respondent "because the latter allegedly presented original copies while petitioner allegedly only submitted "photocopies" of the proof of its date of receipt of the FLD/FAN." Petitioner harps on its contention that respondent's testimonial and documentary evidence failed to prove that the FLD/FANs were received on July 18, 2012 and maintains that its evidence strongly prove that it received the same on August 16, 2012 and that the protest filed on September 14, 2012 was within the thirty-day period allowed by law.

In his Comment, respondent merely stated that the arguments raised by petitioner in its motion were repetitions and reiterations of those already raised in its Petition for Review and which have been duly considered and exhaustively and eloquently explained by the Court in the assailed Decision. He therefore requests that the Decision dated August 22, 2018 be affirmed by the Court and that petitioner be ordered to pay its tax deficiencies for fiscal year ended March 31, 2009.

RULING OF THE COURT

Before we delve into the factual issue of dates of receipt of the FLD/FANS and filing of protest, this Court deems it proper and primordial to tackle the issue of jurisdiction of the Court and its vital connection to the timely filing of official documents such as protests in case of tax assessments. It is also imperative to deal with the theory proffered by petitioner that the issuance of the FDDA superseded the FANS such that it effectively "cures" any infirmity/or negative consequences caused by the belated filing of the protest.

We find the above-stated theory of petitioner bereft of merit.

Section 228 of the 1997 National Internal Revenue Code (NIRC), states in part, thus:

> "Section 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 pre-assessment notice shall not be required in the following cases :
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> 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**. (emphasis supplied)

Section 3.1.5 of RR No. 12-99, which implemented Section 228 of the 1997 NIRC, provides as follows:

> "Section 3.1.5 – *Disputed Assessment-* **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.** If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed

> issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> xxx xxx 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." (emphasis supplied)**

Note that the failure to file a timely protest to the FLD/FANs shall make such assessment final, executory and demandable. The period of thirty (30) days written in the law prescribes the time frame when the FLD/FAN may be disputed. The assailed Decision of the Court explained that petitioner failed to file a protest within the thirty (30) day period provided by law, thus the assessment, in the instant case, is deemed to have not been protested. There being no valid protest, there can be no consequential "denial of a valid protest". The FDDA which was issued based on an invalid protest cannot be considered a "decision on a disputed assessment" appealable to this Court. In the case of Republic of the *Philippines vs. Hizon*[1], the Supreme *Court* ruled in this wise:

> "Even assuming that she first learned of the deficiency assessment on this date, her request for reconsideration was nonetheless filed late since she made it more than 30 days thereafter. Hence, her request for reconsideration did not suspend the running of the prescriptive period provided under Section 223 (c). **Although the Commissioner acted on her request by eventually denying it on August 11, 1994, this is of no moment and does not detract from the fact that the assessment had long become demandable."** (emphasis supplied).

In *CIR vs. BPI*[2], the Supreme Court connected the issue of jurisdiction of the Court of Tax Appeals to the failure to timely file a protest, and we quote:

> The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they become final and unappealable, **Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction**. BPI was, from then on, barred from

[1] G.R. No. 130430, December 3, 1999.
[2] G.R. No. 134062, April 17, 2007.

> disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments." (emphasis supplied)

It must be emphasized that when resolving issues relating to jurisdiction, it must be kept in mind that jurisdiction is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[3] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case.[4] It might even be added that the issuance of an FDDA in spite of a defective protest or a protest filed out of time cannot legitimize the latter into a valid dispute transforming said FDDA into a "decision on a disputed assessment" appealable to this Court.

If established doctrine provides that a void assessment bears no valid fruit[5], then by analogy we can say that a final and unappealable assessment cannot confer upon this Court the requisite jurisdiction to review its correctness and even its validity. This is the essence of this Court's rejection of petitioner's argument that the FDDA issued by respondent supersedes the FANs.

Petitioner then tries to convince the Court that the government has nothing to lose if the Petition for Review is given due course considering that its business provides valuable services to both health and education.

We must remind petitioner that we cannot take questions involving jurisdiction lightly and simply set it aside to avoid foreseen negative consequences should the Court not take cognizance of the instant Petition. Jurisdiction is the power and authority of the court to hear, try, and decide a case.[6] It is the driver which moves a court to dispose of the case on its merits and without it, the court is under strict obligation to dismiss the same for lack of authority, otherwise any decision or judgment rendered is null and void.[7]

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[3] Carmen Danao Malana, et.al. vs. Benigno Tappa, et.al., G.R. No. 181303, September 17, 2009 quoting Laresma vs. Abellana, 484 Phil 766.
[4] Mitsubishi Motors Phils. Corp. vs. Bureau of Customs, G.R. No. 209830, June 17, 2015.
[5] CIR vs. Azucena T. Reyes and Azucena T. Reyes vs. CIR, G.R. Nos. 159694 and 163581, January 27, 2006.
[6] Glynna Foronda-Crystal vs. Aniana Lawas Son, G.R. No. 221815, November 29, 2017.
[7] Jose Cabaral Tiu vs. First Plywood Corporation, G.R. No. 176123, March 10, 2010.

We now resolve the issues revolving around the fact of receipt of the subject FLD/FANs.

Petitioner reiterates its position that it received the FLD/FANs on August 16, 2012, hence the protest filed on September 14, 2018 was well within the thirty-day reglementary period. It even highlights its contention that its duly authorized representative received the FLD/FANs on such a date (August 16, 2012).

In paragraph 21 of its Motion for Reconsideration, petitioner makes the following narrative and we quote:

> "21. As shown in (a) to (e) above, the original of the receiving copy of petitioner bearing the date 16 August 2016 was presented in court, jointly stipulated as duly executed and authentic, offered as an exhibit during the Commissioner's Hearing and eventually admitted by this Honorable Court. As such, it is rather unusual that this Honorable Court stated that petitioner's Exhibits "P-10" and "P-11" are mere photocopies when it admitted the same in evidence on the premise that the originals were presented before the Honorable Court during the Pre-Marking/Commissioner's Hearing."

We review the evidence offered by petitioner during the trial, specifically Exhibits "P-10" and "P-11".

In the Court's Resolution dated October 8, 2015[8], Exhibits "P-10" and ""P-11" were both admitted as evidence for the petitioner "subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case."

Exhibit "P-10"[9] refers to the FLDs all dated July 13, 2012 while Exhibit "P-11"[10] refers to FANs similarly dated July 13, 2012. There is no dispute that such documents were offered and admitted by the Court, hence considered in our final disposition.

A close scrutiny, however, of the subject exhibits of petitioner shows a date of receipt handwritten and signed by a person whose name cannot be ascertained and which is found on the lower left hand portion of the FAN pertaining to the alleged income tax

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[8] Court Docket, Volume II, pp. 847-848.
[9] Court Docket, Volume II, page 782.
[10] Court Docket, Volume II, pp. 805-806.

deficiency of petitioner[11]. The FLD and the other FANs do not bear a similar notation of receipt. It is also worthy to note that the same document offered by respondent as Exhibit "R-11"[12] does not show any such notation and signature. We also find it strange that an official document which has been sent and received by registered mail should be received and noted in the document itself. To dispel any suspicion and to prove that the signature and date of receipt is authentic, petitioner should have presented the employee or the authorized representative whose signature was indicated in the subject assessment notice. In the absence thereof, the disputable presumption that a letter duly directed and mailed was received in the regular course of mail, subsists.

We also take note of the description of said exhibits "P-10" and "P-11" in the Formal Offer of Exhibits filed with this Court on July 30, 2015[13] which petitioner merely ascribed the following purposes, to wit:

> Exhibits "P-10" to "P-11" – To show that Respondent issued Formal Letters of Demand against the Petitioner.

Note that the purpose is merely to show that respondent **issued** the FLD/FANs to petitioner (as shown by the date indicated in the letter) but it does not show that petitioner **received** the FLD/FANs.

During the hearing held on January 18, 2017, counsel for petitioner opted to focus on its theory that the FDDA superseded the FAN when the issue on the fact of receipt of the FAN was raised, and we quote the verbal exchanges of counsels, with Atty. Eugenio representing respondent and Atty. Sy, representing petitioner, thus:

> Atty. Eugenio – Your Honors, if I may, based on our record and based on the records submitted by the Manila Central Office, the final assessment notice (FAN) was received by petitioner sometime in July and they filed their request for reinvestigation sometime in September, your Honors. So it's our position at the time they filed their request for reinvestigation.
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> Justice Castaneda – They are questioning the timing.
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> Atty. Sy – **But, your Honors, such issue about the timing of the receipt of the final assessment notice (FAN) has not been raised in the FDDA**. Your Honors. In fact in the FDDA, if you read the FDDA the amount of assessment was reduced from 141

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[11] Court Docket, Volume II, page 805
[12] Court Docket, Volume II, page 656.
[13] Court Docket, Volume II, pp. 719 -724.

> million in the final assessment notice to just around 30 or 40 million in the FDDA. And that issue on the receipt of the final assessment notice was not ever mentioned in the FDDA, your Honors.
>
> xxx xxx xxx
>
> Justice Castaneda – So, your position is that the FDDA already supersedes the FAN?
>
> Atty. Sy- Yes, your Honors.
>
> Justice Castaneda – But their position is different. Proceed. (emphasis supplied)

In the assailed Decision, the Court placed heavier weight to the evidence presented by respondent to prove the fact of receipt of the FLD/FANs, not because respondent allegedly presented original copies while petitioner allegedly only submitted photocopies of the proof of its date of receipt of the FLD/FAN", but because respondent offered more credible proof of the fact of mailing and receipt of the FLD/FANs and we quote:

> In the assessment of the evidence presented by both parties, the Court finds that the evidence adduced by the respondent is more credible as he was able to sufficiently and more empirically support the timeline of receipt of the FLD/FANs by the petitioner. In contrast, petitioner failed to document and present such documentary proof of its date of receipt of the FLD/FANs other than the photocopies of the final assessment notices."
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> xxx xxx xxx
>
> The argument of petitioner that respondent did not present any evidence that petitioner received the FLD/FANs on July 18, 2012 is belied by the records of this case. On the contrary, this Court finds the evidence submitted by respondent, sufficient to establish completed service, i.e., receipt of the FLD/FANs on July 18, 2012 as alleged by respondent. Having then received the FLD/FANs on said date, it was incumbent on the part of the petitioner to file the protest within thirty (30) days from receipt thereof."
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> xxx xxx xxx

It is an established doctrine that if a taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove that such notice was indeed received.[14] While we do not intend to deviate from this rule, its meaning and implications should be analyzed on the basis of the peculiar circumstances of each case before it is applied. This Court holds that in cases where there are conflicting claims as to the dates of receipt of an assessment or any official notices, it is incumbent upon the recipient, to prove that it indeed received said notice on the date it claims to have received it before the burden is shifted to the party contravening the same.

During trial, respondent presented the Registry Receipt with Number 922821 dated July 13, 2012[15] together with the Transmittal Slip of the FLD/FANs showing the Name of Taxpayer (petitioner herein) and other details such as the taxable year, kind of tax and amount of tax deficiencies.[16] These pieces of evidence were corroborated by the Judicial Affidavit of Armando Macatangay, the Administrative Assistant assigned at the Records Section, Bureau of Internal Revenue (BIR), Revenue Region No. 6-Manila, portions of his testimony embodied in the Affidavit are quoted hereunder, to wit:

> Q7. In what manner did you send the FANs and FLDs with Details of Discrepancy?
>
> A. I sent the FANs and FLDs with Details of Discrepancy on 13 July 2012 through registered mail under Registry Receipt No. 922821, by depositing a copy of the said FANs and FLDs with Details of Discrepancy at the Manila Central Post Office, in a sealed envelope, addressed to petitioner's registered address at 1122 Gen. Luna St., Paco, Manila, and with the instruction to the postmaster to return the mail to the sender after ten days if undelivered.
>
> Q8. If shown to you the said Registry Receipt will you be able to identify it?
>
> A. Yes.
>
> Q9. I am showing to you a copy of Registry Receipt No. 922821 dated 13 July 2012, marked as Exhibit "R-18", what is the relation of this document to the Registry Receipt you mentioned.
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> A. This is the same Registry Receipt I am referring to.

In the case of *Ting vs. Court of Appeals* [17], the Supreme Court ruled, thus:

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[14] CIR vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[15] Exhibit "R-17", Court Docket, Volume II, page 663.
[16] Exhibit "R-16, Court Docket, Volume II, page 663.
[17] G.R. No. 140665, November 13, 2000.

"In civil cases, service made through registered mail is proved by the **registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13** (see Section 13, Rule 13, 1997 Rules of Procedure)." (emphasis supplied)

This was further confirmed in *Republic of the Philippines vs. Resins, Inc.*[18] where the Supreme Court stressed the importance of the aforementioned documents to prove receipt, thus:

"When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the **registry receipt** issued by the mailing office and an **affidavit** of the person mailing of facts showing compliance with Section 13, Rule 13 of the 1997 Rules of Civil Procedure." (emphasis supplied)

xxx xxx xxx

"It cannot be stressed enough that it is the registry receipt issued by the mailing office and the affidavit of the person mailing which proves service made through registered mail. Absent one or the other, or worse both, there is no proof of service."

In another case entitled *CIR vs. GJM Phils. Manufacturing Inc.* [19], the Supreme Court accorded the same importance to the presentation of the registry receipt OR the registry return card to prove completeness of service and we quote:

"To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts **or** the Registry Return Card which would have been signed by the taxpayer or its authorized representative." (italics ours)

In disposing of the issue of receipt of the FLD/FANs and its denial thereof by herein petitioner, the Court, in the assailed Decision comprehensively discussed the standards of proof as dictated by law and jurisprudence. The Court then concluded that respondent substantially and successfully discharged the burden of proving that the FLD/FANs were sent and received by petitioner on July 18, 2012 by giving credence to the documents presented, and we quote:

[18] G.R. No. 175891, January 12, 2010.
[19] G.R. No, 202695, February 29, 2016.

> "The aforementioned evidence presented by the respondent specifically the **Registry Receipt No. 922821**, the **Judicial Affidavit of Mr. Armando Macatangay** and the **Certification issued by the Head of the Records Unit of the Postmaster,** Central Office, Manila are more than sufficient to prove receipt by the petitioner and the date when the latter received it. In fact, postal office certifications are considered *prima facie* proof that the FLD/FANs were delivered to the addressees on the date aforestated."

Be it noted that, although the postal certification issued by the Postmaster or the Head of the Records Unit is proof that the FLD/FANs were delivered to the addressees on the dates aforestated, this merely corroborates the primary evidence submitted by petitioner. i.e., the Registry Receipt and the Judicial Affidavit of Mr. Macatangay to prove mailing and receipt by the petitioner on July 18, 2018.

Petitioner contends that the Postal Certification[20] should not have been admitted as evidence for the petitioner because the signatory therein was not presented in Court to affirm and confirm the said certificate. We find this without merit.

The records and the testimonies show that the signatory to the postal certification could not be presented in court as he was already deceased during the trial of this case.[21] Nevertheless, respondent's witness, Atty. Eugenio, a lawyer from the Legal Division of the BIR, was presented as a substitute witness and testified that he secured the said postal certification from the Office of the Postmaster, and we quote:

> Atty. Sy: You also mentioned that you secured certain documents from the Administrative Division and from other offices of the Bureau of Internal Revenue (BIR). What are these documents?
>
> Witness: From the Administrative Division, the registry return receipt, registry return card pertaining to the preliminary assessment notice, final assessment notice and final decision on disputed assessment. And with respect to the Office of the Postmaster, we secured a Certification relative to the mail matter containing the final assessment notice (FAN) and the FDDA.

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[20] Exhibit "R-21", Court Docket, Volume II, page 708.
[21] TSN dated January 18, 2017.

The admission of the Court of the said Postal Certification was thus limited to prove the fact that said Certification was issued by the Office of the Postmaster.

Finding no compelling reason to reconsider or modify the assailed Decision, we reiterate our ruling that the Court has no jurisdiction to take cognizance of the instant Petition for Review.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (of the Decision dated 22 August 2018)* is **DENIED** for lack of merit.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice