REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FACTORY AUTOMATION AND INSTRUMENTATION CORP.,
Petitioner,

CTA CASE NO. 8518

-versus-

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 24 2015
3:06 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

This is a Petition for Review[1] filed on July 19, 2012, praying that respondent Commissioner of Internal Revenue (CIR) be permanently enjoined from enforcing the Final Notice Before Seizure (FNBS) and/or Warrant of Garnishment/Levy against petitioner and the alleged tax deficiencies for taxable year 2008 issued against petitioner, in the amount of Php438,441.13 be declared void and cancelled and withdrawn.

[1] Docket (CTA Case No. 8518), pp. 6-57, with Annexes.

STATEMENT OF THE CASE

Petitioner, Factory Automation and Instrumentation Corporation, is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address located at No. 113 Gerryville Subdivision, Damong Maliit, Barangay Nagkakaisang Nayon, Novaliches, Quezon City, Metro Manila. It is engaged in engineering services[2].

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR), who holds office at the Bureau of Internal Revenue National Office Building, Agham Road, Diliman, Quezon City.

The facts admitted by the parties in their Joint Stipulation of Facts[3] are as follows:

> "3. On August 3, 2009, the Bureau of Internal Revenue (BIR) Revenue Region No. 7, Revenue District Office No. 28 issued a Tax Verification Notice (TVN) No. 2003-00130732 authorizing Mr. Ernesto B. Penullar to verify the supporting documents and/or pertinent records of "all internal revenue taxes" covering the taxable year 2008.
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> 4. On the same date, Revenue Officer Penullar and Ester C. Maneja issued a First Request for Presentation of Records.
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> 5. On August 18, 2009, the BIR issued a Second Request for Presentation of Records.
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> 6. On September 2, 2009, Revenue District Officer (RDO) Benito B. Wong, issued a Final Notice Before Issuance of Subpoena Duces Tecum.
>
> 7. On October 20, 2009, Legal Division Chief, Atty. Jose Ric A. Cabrera, issued a Subpoena Duces Tecum.
>
> 8. On December 5, 2009, RDO Benito B. Wong, issued a Notice of Informal Conference.
>
> 9. On May 23, 2011, Petitioner received a Preliminary Assessment Notice (PAN) dated May 14, 2011, alleging that petitioner is liable to pay an aggregate amount of Php428,650.92 representing alleged deficiency Income Tax, VAT, Expanded Withholding Tax, Compromise Penalty and Interest.
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> 10. On June 8, 2011 Petitioner submitted a Protest Letter dated June 7, 2011 against Preliminary Assessment Notice dated May 14, 2011.
>
> 11. On May 16, 2012, Petitioner received a Preliminary Collection Letter (PCL) dated May 8, 2012, issued by Assistant Revenue District Officer Buenaventura C. Lomibao, alleging that an Assessment Notice dated June 14, 2011 was previously issued

[2] Exhibit "P".

[3] Docket, pp. 107-114.

against petitioner, and that the collecting internal revenue tax liabilities which remain unpaid in the aggregate amount of Php438,441.13, representing alleged deficiency Income Tax, VAT, Expanded Withholding Tax, Compromise Penalty and Interest.

12. On June 14, 2012, Petitioner, xxx filed an Administrative Protest Letter against PCL issued by the Respondent.

13. On June 20, 2012, Petitioner received a Final Notice Before Seizure (FNBS) dated May 31, 2012."

On July 19, 2012, petitioner filed the instant Petition for Review, raffled to the then First Division of the Court.[4]

The Summons was issued on July 26, 2012.[5]

On August 13, 2012, the CIR filed a Motion for Extension of Time to File Answer, which motion was granted by the Court in an Order dated August 15, 2012.

On September 10, 2012, the CIR filed her Answer,[6] interposing the following Special and Affirmative Defenses:

"5. She reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses;

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

7. Herein petitioner was fully apprised of the facts and the law which the Final Assessment was issued. The Final Assessment Notice, Formal Letter of Demand and Details of Discrepancies which were received by the petitioner, detailed the manner of computation, the facts upon which the assessment was based and the law applied in arriving at the deficiency assessment. Contrary, to the assertion of the Petitioner, copies of the Final Assessment Notice and Formal Letter of Demand that were personally served were received by the petitioner. In fact, they were received by Freddie Masula, the same person who received the Preliminary Assessment Notice which was personally served. More importantly, in addition to the personal service, the PAN was sent

[4] Composed of then Presiding Justice Ernesto D. Acosta and Associate Justices Erlinda P. UY andEsperanza R. Fabon-Victorino.

[5] Docket, p. 58.

[6] Ibid. at pp. 62-69, with attachments.

to the Petitioner through registered mail. Same is true with the Final Assessment Notice and Formal Letter of Demand xxx.

8. The contention of the Petitioner that the Final Notice Before Seizure (FNBS) is deemed to be Respondent's last act is misplaced. As alleged by the petitioner, the administrative protest was filed on June 14, 2012 while the Final Notice Before Seizure was received by the Petitioner on June 20, 2012. However, as admitted by the petitioner, the FNBS was dated May 31, 2012 or 14 days prior to the filing of the Administrative Protest. In essence, the FNBS did not in any manner dispose the Administrative protest in Question. Consequently, the instant Petition for Review was filed by the petitioner prematurely;

9. It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, existing laws and prevailing jurisprudence to validly dispute the Assessment including but not limited to the submission of complete supporting documents;

10. Taxpayer must establish by sufficient and competent evidence that its protest is valid and binding;"

On December 12, 2012, the parties filed their Joint Stipulation of Facts and Issues, which was approved by the Court in the Resolution[7] dated December 28, 2012. On January 9, 2013, the Court issued the Pre-Trial Order.[8]

Trial thereafter ensued. The parties presented and offered their respective documentary and testimonial evidence.

Petitioner presented Ms. Raychelle C. Centeno as its witness and the documentary evidence marked as Exhibits "A" to "GG-1" inclusive of sub-markings. The Exhibits ""G", "V", "W", "X", "Y" and "GG" are denied for failure of petitioner to present the originals of the said exhibits[9].

On the other hand, respondent presented as witnesses, Mr. Ernesto B. Penullar, Mr. Arnold C. Larrosa and Mr. Ferdinand P. Pacada and offered in evidence Exhibits "1" to "19-A". The Exhibit "1", pertaining to the BIR Records of this case, was denied admission for being too general and for not having been identified by a competent witness[10].

On April 4, 2013, this case was transferred to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2013, "Reorganizing the Three (3) Divisions of the Court of Tax Appeals" dated March 26, 2013.

[7] Docket, p. 116.
[8] Ibid. pp. 118-124.
[9] Resolution dated April 23, 2013. Docket, p. 306.
[10] Resolution dated January 15, 2014. Docket, pp. 389-390.

In the Resolution[11] dated January 14, 2014, the parties were ordered to file their respective memoranda. On March 26, 2014, petitioner filed a Motion to Admit Memorandum with attached Memorandum[12].

The Records Verification Report dated March 17, 2014[13] states that the CIR failed to file her Memorandum.

This case was deemed submitted for decision in a Resolution[14] dated May 6, 2014.

ISSUES

As stipulated by the parties, the following are the issues[15] for this Court's consideration:

1. Whether the alleged tax deficiency assessment for the year ending December 31, 2008 against petitioner is valid.
2. Whether petitioner is liable to pay the aggregate amount of Php428,650.92 representing alleged tax deficiencies for taxable year 2008.
3. Whether petitioner failed to receive the Final Assessment Notices, Formal Demand Letter and Details of Discrepancy.
4. Whether petitioner complied with existing laws and guidelines relative to the Filing of Protest and the filing of Petition for Review.
5. Whether the right of respondent to assess petitioner for alleged tax deficiencies has already prescribed.

PETITIONER'S ARGUMENTS

Petitioner claims that it was not afforded due process because it did not receive any FAN or Formal Letter of Demand before the issuance of the FNBS[16] dated May 31, 2012; that respondent's right to assess and collect has prescribed since the PCL was received by petitioner only on May 16, 2012; and the assessment was void.

On the other hand, respondent counters that petitioner was afforded due process; the PAN and FAN were both served personally and sent through registered mail; that the FNBS did not dispose the Administrative Protest filed by petitioner; and that the instant petition was prematurely filed.

[11] Ibid. pp. 389-390.
[12] Ibid. pp. 402-423.
[13] Ibid. p. 426.
[14] Ibid. p. 428.
[15] Ibid. p. 109, Joint Stipulation of Facts and Issues.
[16] Received by petitioner on June 2012.

RULING OF THE COURT

The FAN was received by petitioner

Petitioner alleged in its petition that it did not receive the FAN issued by the CIR, in violation of Section 228 of the NIRC, which provides:

> ***Protesting of Assessment*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall notify first the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx
>
> The taxpayer shall be informed in writing of the law and 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 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.

It has been held that once a taxpayer denied receiving an assessment from the BIR, it is incumbent upon the BIR to prove by competent evidence that such notice was indeed received by the taxpayer. In the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[17], the Supreme Court ruled that:

> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals, 149 SCRA 351*).
>
> xxx
>
> xxx. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts**. xxx.
>
> xxx
>
> In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that **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 supplied)

[17] G.R. No. 157064, August 7, 2006. Citations omitted.

xxx

> In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. **The respondent presented the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted.**
>
> xxx
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> **Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained. Yet respondent failed to present such evidence.**
>
> In the case of *Nava v. Commissioner of Internal Revenue*, this Court stressed on the importance of proving the release, mailing or sending of the notice.
>
> > "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." (Emphasis supplied)

To prove that indeed petitioner received the FAN, respondent presented the following: 1) the Assessment Notices[18] and Formal Letter of Demand[19] and Details of Discrepancies[20] which were all received by "Freddie Masula" as evidenced by his name and signature therein and with a note "TP"[21] on the space provided on the designation and a date when the notice was received; 2) the transmittal list of the BIR, Revenue Region No. 7[22] showing that the FAN with registry receipt number 4298 was sent on June 15, 2011; 3) a Certification

[18] Exhibits "6", "7", "8" and "9".
[19] Exhibit "10".
[20] Exhibit "11".
[21] Exhibits "6-1" and "10-1".
[22] Exhibit "14".

issued by the Postmaster of Novaliches Post Office dated July 1, 2013,[23] which reads:

> "This is to certify that per record of this office **REGISTERED LETTER No. 4298** addressed to **FACTORY AUTOMATION & INSTRUMENTATION CORP.** of **No. 113 Gerryville Subd., Damong Maliit, Brgy. Nagkakaisang Nayon, Novaliches, Quezon City** was received by **FERDINAND P. PACADA – assigned Letter Carrier** for delivery on **June 21, 2011** and duly received by a certain **IRENE MASULA- mother** on **June 21, 2011**.
>
> This certification is issued upon request of **ATTY. AMADO REY B. PAGARIGAN – OIC Chief, Legal Division – BIR** this **1st** day of **July, 2013** for whatever legal purpose it may serve.
>
> (Sgd.) **MARINO B. LONDON**
> Postmaster"

The CIR also presented as witnesses the following: 1) Mr. Arnold C. Larrosa and offered in evidence his Judicial Affidavit to prove that he was the one who mailed the PAN and FAN with Formal Letter of Demand and Details of Discrepancies and that the same were duly served and received by the petitioner[24] and 2) Mr. Ferdinand P. Pacada[25], who testified that he was the one who delivered the letter with Registry Receipt No. 4298. Mr. Pacada presented to the Court a copy of a portion of his delivery book showing that Registered Letter No. 4298 was duly served and received by petitioner through Irene Masula.

From the foregoing, the Court finds that the CIR has satisfactorily established that the FAN, Formal Letter of Demand, with attached Details of Discrepancies dated June 14, 2011, were indeed received personally and through registered mail by the petitioner.

The FAN has become final and executory

Records show that the PAN[26] was issued on May 14, 2011 and was protested by petitioner in its letter dated June 7, 2011[27]. Thereafter, on May 8, 2012, the CIR sent the PCL, requesting petitioner to pay its tax liabilities within ten (10) days from notice. Then, on June 8, 2012, petitioner filed its protest

[23] Exhibit "16".
[24] Exhibit "17". See Judicial Affidavit.
[25] TSN dated October 21, 2013.
[26] Exhibit "J".
[27] Exhibit "K".

letter on the PCL[28]. On May 31, 2012, the CIR issued a Final Notice Before Seizure[29] informing petitioner that in case it still failed to pay the tax liabilities, the CIR will be constrained to serve and execute the Warrant of Distraint and/or Levy and Warrant of Garnishment.

Under the law, this Court has jurisdiction on the following cases:[30]

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> > (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 Code 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 relation thereto, or other matters arising under the National Internal Revenue Code of other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx." (Emphasis supplied)

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippines Islands*[31], the Supreme Court affirmed the decision of the Court of Tax Appeals that it has no jurisdiction on the case since the FAN became final for failure of BPI to file a protest on the FAN.

> **"IMPLICATIONS OF A VALID ASSESSMENT**
>
> Considering that the October 28, 1988 notices were valid assessments, BPI should have protested the same within 30 days from receipt thereof. The December 10, 1988 reply it sent to the CIR did not qualify as a protest since the letter itself stated that "[a]s soon as this is explained and clarified in a proper letter of

[28] Docket, p. 250.
[29] Exhibit "N".
[30] Section 3, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as Amended.
[31] G.R. No. 134062, April 17, 2007. Citations omitted.

assessment, we shall inform you of the taxpayer's decision on whether to pay or protest the assessment." Hence, by its own declaration, BPI did not regard this letter as a protest against the assessments. As a matter of fact, BPI never deemed this a protest since it did not even consider the October 28, 1988 notices as valid or proper assessments.

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 became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from 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:

> Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments."

Revenue Regulations No. 12-99, which implements the 1997 Tax Code provisions on assessments, i.e. Section 228, provides:

> **"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –**
>
> xxx xxx xxx
>
> **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 (3) days from date of receipt thereof** xxx.
>
> 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.**
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty

> (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the commissioner or his duly authorized representative, the taxpayer may appeal to the Court of tax Appeals within thirty (3) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable; Provided, however, that if the taxpayer elevates his protest to the Commissioner within (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." (Emphasis supplied)

From the case and provision above-quoted, it is clear that the protest referred to in a disputed assessment that is properly appealable to the Court of Tax Appeals is a protest on the FAN and Formal Letter of Demand as opposed to a protest on the PAN[32].

In this case, petitioner filed a protest on the PAN and on the PCL but not on the FAN. The CIR was able to prove that the FAN was indeed issued, sent, mailed and received by the petitioner.

Thus, the FAN issued on June 14, 2011 became final and executory within thirty (30) days from receipt thereof, or on June 21, 2011. When this petition was filed on July 19, 2012, the FAN was already final and unappealable. This Court, therefore, has no jurisdiction over the instant case.

From the foregoing, the Court finds that it is no longer necessary to discuss the other issues raised in this Petition.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Ma. Belen R-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[32] Allied Banking Corporation vs. The Commissioner of Internal Revenue, CTA EB No. 157, January 2, 2007.

WE CONCUR:

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice