REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1353 (CTA CASE No. 8759)
	Present: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and RINGPIS-LIBAN, *JJ.*
RAEKEN MARKETING CO., INC., *Respondent.*	Promulgated: OCT 21 2016 11:55 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision dated June 24, 2015[2] and the Resolution dated August 18, 2015[3] rendered by the Second

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

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[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova, *En Banc* Docket, pp. 12-25.
[3] Id., pp. 27-29.

Division of this Court, the dispositive portions of which, respectively, read as follows:

> Decision dated June 24, 2015:
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> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice dated June 15, 2012 for taxable year 2007 and the Warrant of Distraint and/or Levy No. 11-1518-13 dated December 12, 2013 are **CANCELLED** and **WITHDRAWN** for being null and void.
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> **SO ORDERED.**"
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> Resolution dated August 18, 2015:
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> "**WHEREFORE,** premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The facts of the case, as recited by the Second Division in its Decision,[4] are as follows:

> "Petitioner Raeken Marketing Co., Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office at Room 209, Plaza Andrea Building, Don Antonio Heights, Diliman, Quezon City.
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> On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), charged with the assessment and collection of all national internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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[4] *Supra* note 2.

A Subpoena Duces Tecum dated April 14, 2009 was issued by Mr. Jose Ric A. Cabrera, Chief of the Legal Division of BIR Revenue Region No. 7-Quezon City, addressed to the president of petitioner for the production of its books of accounts and other accounting records for taxable year 2007.

Thereafter, Revenue District Officer Benito B. Wong of BIR Revenue Region No. 7, Revenue District Office No. 28, Novaliches, Quezon City sent a Notice of Informal Conference dated September 3, 2009 to petitioner, informing petitioner that the report of investigation of its tax accountabilities for taxable year 2007 has been submitted by Revenue Officer Ernesto B. Penullar for appropriate action and further requesting petitioner to appear for an informal conference.

Subsequently, an Agreement Form dated September 23, 2009 was executed by petitioner and Revenue Officer Penullar, Group Supervisor Ester C. Maneja and Revenue District Officer Wong, wherein petitioner agreed to pay the deficiency taxes in the amount of ₱70,005.00, including legal increments. The Agreement Form also states that the report of investigation submitted by the Revenue Officers is subject to review and approval by higher authorities and that Letter Notices that may emanate from them shall not be covered by the said Agreement.

However, on May 28, 2013, Ms. Ruth Vivian G. Gadia, Chief of the Collection Division of Revenue Region No. 7-Quezon City issued a Preliminary Collection Letter, stating that an assessment notice dated June 15, 2012 was sent to petitioner for the collection of its unpaid tax liabilities for taxable year 2007 and that petitioner is requested to pay the said tax liabilities.

On December 12, 2013, a Warrant of Distraint and/or Levy No. 11-1518-13 was issued by Ms. Ruth Vivian G. Gadia in view of petitioner's failure to pay the amount of tax assessed for taxable year 2007 as per Assessment/Demand No. F-028-LNTF-07-VT-023/IT.

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> On December 23, 2013, petitioner filed a letter dated December 18, 2013 addressed to Ms. Gadia, manifesting that its tax liabilities for taxable year 2007 had already been settled as evidenced by the Agreement Form dated September 23, 2009 and the receiving copies of BIR Payment Form No. 0605 and UCPB BTR-BIR Deposit Slip showing payments in the total amount of ₱70,005.00.
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> In the same letter, petitioner emphasized that after the execution of the said Agreement Form on September 23, 2009 and the payment of its deficiency taxes, it did not receive any more notices of any kind or nature from the BIR until the said Preliminary Collection Letter dated May 28, 2013. Petitioner likewise denied receiving the assessment notice dated June 15, 2012.
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> Thereafter, petitioner filed the instant Petition for Review on January 14, 2014, incorporating its Urgent Motion for Prohibition and/or Suspension of Collection of Tax."

The Second Division ruled that Raeken Marketing Co. Inc. (Raeken)'s right to due process of law was violated when the Final Assessment Notice (FAN) was issued, as CIR's pieces of evidence were insufficient to prove that the FAN was indeed received by Raeken in accordance with law. The direct denial of Raeken that it received the FAN shifts the burden upon CIR to prove that the FAN was indeed received by Raeken. However, CIR merely presented the alleged FAN and Registry Return Receipt and such are not enough to prove receipt of FAN by Raeken, as the Registry Return Receipt and the signature thereon are unauthenticated. Since no valid FAN was sent to Raeken, the Warrant of Distraint and/or Levy (WDL) issued by CIR, allegedly arising from the said FAN, must be cancelled.

CIR's Motion for Reconsideration filed on July 7, 2015 was denied *via* the assailed Resolution, hence, this Petition.

CIR argues in her Petition for Review that the FAN was duly received by Raeken when the same was sent through registered mail at Raeken's registered address and the proof of service thereof was duly identified by her witness, and failure of Raeken to respond made the FAN final and executory.

We rule to DENY the Petition for Review.

The mandatory nature of the requirement of informing the taxpayer of the assessment is adequately established in the provisions of law and revenue regulations pertaining to the due process requirement in the issuance of assessments.[5] The pertinent portions of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99 are quoted hereunder for ready reference:

> "SEC. 228. Protesting of Assessment. -
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> xxx xxx xxx
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> 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.
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> xxx xxx xxx
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> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -
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> xxx xxx xxx
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> 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. xxx

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[5] Manuel B. Palaganas doing business under the name and Style Stemiko Commercial, vs. Commissioner of Internal Revenue, CTA Case No. 8394, September 17, 2014.

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xxx xxx xxx"

The above provisions leave no room for argument. The afore-quoted Section 228 clearly mandates that taxpayers must be informed of the facts and law upon which the assessment was made; otherwise, the assessment will be void.[6] Similarly, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the FAN by CIR and the receipt thereof by the taxpayer as part of due process in the issuance of assessments.[7]

In the case of *Commissioner of Internal Revenue vs. Reyes,*[8] the Supreme Court categorically ruled that the assessment is void if there is no valid notice sent. The rationale being: "[t]he 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".

As cited in the assailed Decision, the Supreme Court case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[9] held that it is a requirement of due process that the taxpayer must actually receive the assessment, to wit:

> "xxx the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. xxx"

On the matter of service of a tax assessment, The ruling of the Supreme Court in *Barcelon Roxas Securities,*

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[6] Ibid.
[7] Ibid.
[8] G.R. Nos. 159694 and 163581, January 27,2006.
[9] G.R. No. 155541, January 27, 2004.

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Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,[10] is instructive, *viz*:

> "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). x x x
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> xxx xxx xxx
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> x x x. 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. xxx" (Underlining supplied.)

In the case of *People of the Philippines v. Joseph Typingco,*[11] this Court ruled:

> "In this regard, the Court in Division made the following observation to which the Court *En Banc* agrees, thus:
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> xxx xxx xxx
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> > Jurisprudence likewise dictates that for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In

[10] G.R. No. 150764, August 7, 2006
[11] CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.

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> fact, the registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.' Also, it is a rule that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.
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> Again, the prosecution failed to demonstrate that the registry receipt had been actually served upon the accused or upon his duly authorized agent. The bare testimony of Teresita Maglunog, the BIR document locator and the registry receipt are utterly insufficient to prove that the assessment notices and demand letters were received by the accused. Such failure of the prosecution is a fatal blow to its case.'" (Underlining Supplied.)

A perusal of the records shows that Raeken's president Mr. Reynaldo F. Valeroso, directly denied the receipt of the FAN in his testimony by way of a Judicial Affidavit filed on April 4, 2014. Raeken's denial of receipt of the FAN was also mentioned in its response letter to the WDL, in its Petition for Review and Memorandum filed before the Court. Such direct denial shifts the burden upon respondent to prove that the letter which appears to have been mailed was indeed received by petitioner.

Since Raeken denied receipt of FAN, it is essential for CIR to prove the fact of mailing through the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by Raeken's authorized representative. Therefore, it is not enough that the registry return card was presented by the CIR. Such should have been signed by Raeken's authorized representative.

Even the testimony[12] of Ms. Cristeta SP. Banihit only identified the Registry Return Receipt based on the BIR Records and this does not prove that indeed Raeken received the FAN. As also found out by the Second Division, Raeken has even no idea who the person who signed the Registry Return Receipt.[13]

The failure of the CIR to prove receipt of the assessment by Raeken leads to the conclusion that no assessment was issued. Consequently, the government's right to issue a WDL has no basis to stand on. Suffice it to say that there can be no final, executory and demandable assessment where there is no showing that the subject FAN was properly and duly served upon the taxpayer concerned,[14] the WDL therefore, is based on erroneous or void determination.

Moreover, as correctly raised by Raeken in its Comment[15] to the Petition for Review, the alleged FAN dated June 15, 2012 had already prescribed, having been issued beyond the three (3) year prescriptive period under Section 203[16] of the NIRC. The FAN was to address Raeken's supposedly deficiency income tax and value-added tax (VAT) for year 2007, however, the FAN is dated on June 15, 2012. As pointed out by Raeken, CIR only had until April 15, 2011 to assess the alleged income tax deficiency. For the alleged VAT deficiency, respondent only had until January 28, 2011 to assess, based on the Quarterly VAT returns. Counting the three-year period to assess from the date of filing of returns of income tax and VAT, obviously, the FAN was issued beyond the said period.

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[12] Transcript of Stenographic Notes (TSN) of September 1, 2014 hearing, pp. 11-13.
[13] *Supra* note 3, p. 29.
[14] *People of the Philippines v. Joseph Typingco*, CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.
[15] *En Banc* Docket, pp. 36-46.
[16] Section 203. Period of Limitation Upon Assessment and Collection. -Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed xxx

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A perusal of CIR's Petition for Review shows that the argument raised therein has been fully addressed and discussed in the assailed Decision and Resolution.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated June 24, 2015 and August 18, 2015 respectively are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ON OFFICIAL LEAVE
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.*

ROMAN G. DEL ROSARIO
Presiding Justice