REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTONIO S. SANTOS
Petitioner,

- versus -

C.T.A. CASE NO. 5157

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: APR 15 1998

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DECISION

This action involves a deficiency assessment for income taxes for the years 1987 and 1988, in the respective amounts of ₱43,153,475.71 and ₱44,720,502.19, averred by petitioner to have been illegally imposed by the respondent Commissioner of Internal Revenue.

It appears that petitioner for the years 1987 and 1988 reported in its income tax return the amounts of ₱116,132.30 and ₱170,588.20, respectively, as its income for said periods, and has paid the income taxes due thereon in the amounts of ₱12,180.00 and ₱24,856.00 (p. 158 and 164, BIR Records).

On April 14, 1991, petitioner's premises which included his residence at Nos. 33 and 35 Sparrow St., Marikina, Metro Manila, were searched by the agents of the National Bureau of Investigation (NBI), upon valid warrants duly issued by then Judge Bernardo Pardo of the Regional Trial Court (RTC) of Manila. As a result of the search, various documents and money amounting to ₱13,150.00 were seized from the subject premises.

Based on the records seized and investigation conducted, petitioner was criminally charged for violation of Sec. 1 (d) of P.D. No. 1602, on Illegal Gambling before the Metropolitan Trial Court of Marikina.

During the pendency of the criminal case filed against the herein petitioner, the NBI forwarded to the herein respondent Commissioner of Internal Revenue, photocopies of the 146 pages of documents seized from petitioner s premises by virtue of Search Warrant No. 24-91/12-91 duly issued by the aforementioned judge.

The results of the investigation conducted by the Intelligence and Investigation Office of the BIR disclosed that indeed petitioner is engaged in illegal gambling activities in wide areas of Metro Manila and nearby provinces, thus, he has an unreported income for 1987 and 1988 detailed as follows:

	1987	1988
Net Income from gambling operations	P27,134,030.75	P37,238,141.60
Cash Dividends on gambling investments	7,595,000.00	2,647,500.00
	P34,729,030.75	P39,885,641.60

The abovementioned amounts were based on the various documents seized, specifically the Income Statements for the years 1987 and 1988 (p. 100 & 122, BIR records).

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Accordingly, the petitioner was advised of the preliminary assessment, dated July 2, 1991, of its basic deficiency income tax of ₱12,122,402.00 and ₱13,933,599.00 for the years 1987 and 1988. The same was received by petitioner on July 23, 1991. A day later, petitioner requested, thru its accountants, for a reconsideration of the findings, on the ground of doubtful validity.

On September 24, 1991, Assessment Notices Nos. FAS-1-87-91-002648 and FAS-1-88-91-002649, both dated September 12, 1991, in the amounts of ₱36,064,145.95 and ₱36,575,697.37, were allegedly issued/mailed to herein petitioner, details of which are as follows:

	1987	1988
Net Income per return	₱ 116,132.30	₱ 170,588.20
Add: Income from gambling Operations	34,729,030.75	39,885,641.60
Net Income per investigation	₱34,845,163.05	₱40,056,229.80
Less: Personal & Additional exemptions	24,000.00	24,000.00
Taxable Income	₱34,821,163.05	₱40,032,229.80
Income Tax due thereon	₱12,134,582.00	₱13,958,455.00
Less: Payment	12,180.00	24,856.00
Deficiency Income Tax	₱12,122,402.00	₱13,933,599.00
Add: 50% Surcharge (fraud)	6,061,201.00	6,966,799.50
25% Surcharge	3,030,600.50	3,483,399.75
Total	₱21,214,203.50	₱24,383,798.25
Add: Interest 10/10/91 (70%)	14,849,942.45	12,191,899.12
Total Amount Due & Collectible	₱36,064,145.95	₱36,575,697.37

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Meanwhile, On December 23, 1991, the criminal case earlier filed against the herein petitioner for illegal gambling was dismissed by the Presiding Judge of Branch 76 of the Metropolitan Trial Court of Marikina. The dispositive portion of the said decision is quoted hereunder:

> "WHEREFORE, finding the evidence for the prosecution insufficient to prove the guilt of the accused, the Court hereby orders the dismissal of the information and the accused is ACQUITTED of the charge against him as contained in said information. No costs. The bail bond filed for his provisional liberty is hereby cancelled and released. For not being prohibited articles, the items in the inventory list (Exhibit "B") are ordered returned in the premises wherein they were seized."

On August 25, 1992, a warrant of distraint and/or levy was issued to herein petitioner. Likewise, warrants of garnishment of petitioner's bank deposits were served to the managers of Bank of Philippine Islands (BPI) and Metrobank, Marikina Branches, on February 17, 1993.

In a letter dated August 28, 1992, received by respondent on September 1, 1992, petitioner requested the latter to reconsider the above-mentioned warrants enforcing collection of the aforementioned deficiency income taxes and declare it of no effect whatsoever as it did not receive the said assessment notices Nos. FAS 1-87-91-002648 and FAS 1-88-91-002649. Respondent in her letter dated July 8, 1994, denied the same, and requested the petitioner to pay the respondent the amounts of ₱43,153,475.71 and ₱44,720,502.19, as the former's deficiency income taxes for 1987 and 1988, broken down as follows:

	1987	1988
Net income per return	₱ 116,132.30	₱ 170,588.20
Add: Income from gambling Operations	34,729,030.75	39,885,641.60
Net Income per Investigation	₱34,845,163.05	₱40,056,229.80
Less: Personal and Additional Exemptions	24,000.00	24,000.00
Taxable Net Income	₱34,821,163.05	₱40,032,229.80
Income Tax Due Thereon	₱12,134,582.00	₱13,958,455.00
Less: Tax Payment	12,180.00	24,856.00
Deficiency Income Tax	₱12,122,402.00	₱13,933,599.00
Add: 50% Surcharge	6,061,201.00	6,966,799.50
25% Surcharge	3,030,600.50	3,483,399.75
Sub-Total	₱21,214,203.50	₱24,383,798.25
Add: Interest up to June 15, 1993	21,914,272.21	20,311,703.94
Compromise Penalty	25,000.00	25,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	₱43,153,475.71	₱44,720,502.19

Hence, on October 6, 1994, petitioner filed with this Court the instant petition for review.

Petitioner presents the propositions as reasons of the petition for review that the assessments for 1987 & 1988 issued by the respondent against him are void and of no legal effect on grounds that: (1) it never received the aforementioned assessment notices dated September 12, 1991 which did not contain the signature of Deputy Commissioner Eufracio Santos that were allegedly sent by respondent on September 24, 1991, (2) it was deprived of the opportunity to contest the findings of the revenue investigations, by reason of his failure to receive the alleged deficiency income tax assessment, thus, his constitutional right to due process was violated as provided in Sec. 229 of the Tax Code, (3) the photocopies of two (2) financial statements covering 1987 and 1988 which were made the basis of the tax assessment for said periods against the petitioner (pages 100 & 122 of the BIR Records) did not contain the name of the herein petitioner (4) the respondent did not conduct any tax investigation on petitioner's alleged unreported income from gambling operations, but merely relied on the xerox copies of documents transmitted to the BIR by the NBI, and, (5) that it never engaged in illegal gambling, and this fact was actually confirmed by the hearing judge who presided over the criminal case (Illegal Gambling) that was filed by the NBI against the petitioner.

On the other hand, respondent raises the herein special and affirmative defenses, in her answer to the petition for review, and we quote <u>in toto</u>, thus: (1) the taxpayer is deemed to have received, in due course of mail, the assessment notices that were issued by the BIR,

(2) under Sec. 7 of the Tax Code, the Commissioner of Internal Revenue may obtain information on potential taxpayers from government offices or agencies, (3) all income from whatever source derived by an individual taxpayer during each taxable year is subject to income tax under the Sec. 21(a) of the Tax Code, and (4) the burden of proof is on the taxpayer to rebut the findings of the Commissioner of Internal Revenue.

The decisive issue that comes to fore for our determination is : whether or not petitioner is liable for the amounts of ₱43,153,475.71 and ₱44,720,502.19 as deficiency income taxes on its income derived from his illegal gambling activities for the years 1987 and 1988.

Settled is the rule that assessments are prima facie presumed correct and made in good faith. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. ***(Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 104151, March 10, 1995).*** Likewise, it is settled that for an assessment to stand the test of judicial scrutiny it must be based on actual facts and not on mere presumption no matter how reasonable or logical said presumption may be. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. ***(Commissioner of***

Internal Revenue vs. Island Garment Manufacturing Corp., 153 SCRA 665; Collector vs. Benipayo 4 SCRA 182). The assessment cannot be based on hearsay evidence. *(In re Estate of Guilette, 58 Phil. 813).*

In the case at bar, the Court finds that indeed respondent based the subject assessments on the documents indorsed by the NBI to her, particularly pages 100 and 122 of the BIR records. Records of the case clearly show no data as to what method of income determination was employed by the respondent in arriving the subject assessment. When respondent's witness, Mr. Jesus Duque, testified on May 5, 1997, he professed no knowledge of the assessment and pointed to his men as the ones who conducted the examination. Not one of those men who conducted the examination was even presented by respondent. It was not established by the respondent that petitioner has indeed earned income from gambling for the years in question. It was found by the Metropolitan Trial Court Judge of Marikina that herein petitioner was not guilty of the crime of illegal gambling. The acquittal of the petitioner and the fact that respondent did not present any evidence that will convince this Court that petitioner indeed earned the amounts of P34,729,030.75 and P39,885,641 for the years 1987 and 1988 from illegal gambling, were sufficient to rebut the presumption of the correctness of the assessment. The Court cannot place any probative value to the financial statements for 1987 & 1988 (pages 100 & 122 of BIR records), which did not contain the name of herein petitioner and which were not signed by any auditor or any person who prepared the same. Neither were the originals of those documents presented to this Court. While there is a truism to the contention of the respondent that all income from whatever source derived by an individual taxpayer is subject to income tax under Sec. 21(a) of the Tax Code, it is a fallacy to apply the same in the case at bar because, as it was earlier mentioned, the alleged income derived by the petitioner from gambling operations for years in question was not properly proven by the respondent. Thus, to agree with respondent's assessments without sufficient factual basis, will make the petitioner liable to pay more than what is due and demandable from him.

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 Supreme Court 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 on the party favored by the presumption to prove that the mailed letter was indeed received by the addressee *(see Republic vs. Court of Appeals, 149 SCRA 351; CIR vs. Arnoldus Woodworks Int'l Inc. CTA Case No. 4269, March 18, 1994 and CA GR-SP No. 34019 dated August 31, 1995).*

In the instant case, respondent failed to discharge this duty. No evidence was presented to show that indeed the subject deficiency tax assessment notices were received by the herein petitioner. Thus, We agree with the petitioner that it was denied due process required by law, and finds that in the case at bar, the power to tax exercised by the herein respondent was done with arbitrariness.

IN THE LIGHT OF ALL THE FOREGOING, petition is granted. Respondent is hereby **ORDERED** to **CANCEL** the subject deficiency tax assessments against petitioner. No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals