REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES
Petitioner,

-versus-

JOSEPH TYPINGCO,
Fiesta Pack, Inc.,
Respondent.

CTA EB CRIM CASE NO. 021
(CTA CRIM. CASE NO. O-114)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALSATAS *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 27 2013 3:10pm

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DECISION

Fabon-Victorino, J.:

This Petition for Review filed by the prosecution on August 3, 2012 assails the Resolution dated July 2, 2012 of the Court in Division, which denied its Motion for Partial Reconsideration (Of The Civil Aspect Of The Case) dated May 31, 2012, as well as the Decision dated May 16, 2012, relative to the cancellation and setting aside of the deficiency Value-added Tax, Income Tax and Expanded Withholding Tax assessments for taxable year 2000 issued against Fiesta Pack, Inc.

The facts as culled from the record and evidence adduced during the trial.

On September 6, 2001, a Letter of Authority was issued by the Bureau of Internal Revenue (BIR) for the examination of the books of accounts and other accounting records of Fiesta Pack in relation to its internal revenue taxes for taxable year 2000. The investigation resulted in the issuance of a Pre-Assessment Notice (PAN) dated June 2, 2004, assessing Fiesta Pack for deficiency Income Tax (IT), Expanded Withholding Tax (EWT) and Value-added Tax (VAT). Subsequently, or on June 28, 2004, Final Assessment Notices and demand letters were issued against Fiesta Pack.

For failure of Fiesta Pack to pay the taxes due despite repeated demands allegedly rendering the assessment final and executory, the prosecution, on March 3, 2009, filed the Information against respondent for violation of Section 255, in relation to Section 253(D) and 256 of the National Internal Revenue Code (NIRC), as amended, docketed as CTA Crim. Case No. O-114. The Information dated September 30, 2008 reads as follows:

> The undersigned accuses **JOSEPH TYPINGCO** of a Violation of Section 255 in rel. to Sec. 253(d) & 256 of the NIRC, committed as follows:
>
> That on or about **June 28, 2004**, in the City of Manila, Philippines, the said accused, JOSEPH TYPINGCO as President/Authorized officer of FIESTA PACK, INC. located at 1517 State Center Bldg., 333 Juan Luna St., Binondo, in this City, did then and there willfully and unlawfully fails, refuses and neglects, as they still fails, refuses and neglects to pay his deficiency internal revenue tax liabilities for the year 2000, to wit:

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KIND OF TAX	ASSESSMENT NO.	DATE	AMOUNT
Def. Income	30-2000	06-28-04	P13,099,485.00
Def. VAT	30-2000	06-28-04	5,152,715.15
Def. EWT	30-2000	06-28-04	15,753.00

or in the total amount of P18,267,953.15, despite notice and service of said assessment and Warrant of Distraint and/or Levy, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of P18,267,953.15, Philippine currency.

Contrary to law.

On March 11, 2009, a Warrant of Arrest was issued against respondent who posted a cash bond for his provisional liberty on March 20, 2009.

On May 20, 2009, respondent filed a Motion to Quash the Information on jurisdictional ground claiming that the Complaint-Affidavit did not contain an Affidavit of Non-Forum Shopping required under Rule 6, Section 1 of the Revised Rules of the Court of Tax Appeals and the Information was not signed by the Commissioner of Internal Revenue as mandated in Rule 9, Section 2 of the same Rules.

In the Resolution dated July 16, 2009, the Court denied respondent's Motion to Quash and subsequently his Motion for Reconsideration in the Resolution of August 12, 2009.

On September 3, 2009, respondent elevated the adverse ruling to the Court *En Banc,* which denied the petition in the Resolution of June 24, 2010.

When arraigned on August 27, 2009, accused refused to enter any plea, hence, a plea of "not guilty" was entered in the record of the case.

Trial ensued during which the prosecution presented no less than seven (7) witnesses, namely: Gelina G. Cacal, Myla Gulle, Edna Ortalla, Ma. Paz Arcilla, Teresita Maglunog, Teresita Gerasol and Atty. Mary Ann V. Morales-Lagura.

On the other hand, the defense presented accused as its sole witness.

On May 16, 2012, the Court in Division rendered a decision acquitting accused,[1] in this wise:

> WHEREFORE, premises considered, accused Joseph Typingco is hereby ACQUITTED for failure of the prosecution to establish the guilt of the Accused beyond reasonable doubt and without civil liability.
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> SO ORDERED.

On May 31, 2012, the prosecution filed a Motion for Partial Reconsideration (Of the Civil Aspect of The Case) praying that a judgment be rendered declaring the subject assessment valid and ordering FIESTA PACK to pay the BIR the total amount of P18,267,953.15 due as its corporate IT, VAT and EWT liabilities for taxable year 2000.[2]

On June 8, 2012, respondent filed his Opposition to the Motion for Partial Reconsideration[3] arguing that Section 228 of the Tax Code mandates that the taxpayer must be formally notified that he is liable for deficiency taxes through the PAN and be given a period of 15 days from receipt thereof to contest the assessment. However, in his case,

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[1] *Rollo*, pp. 1070-1091.
[2] *Rollo*, pp. 1101-1104.
[3] *Rollo*, pp. 1108-1109.

the record is bereft of any proof that the BIR observed this mandatory requirement of notice to his prejudice.

Finding for accused, the Court in the Resolution dated July 2, 2012, denied the Motion filed by the prosecution for lack of merit. The Court in Division reiterated that the prosecution failed to prove that accused received the PAN and that accused was the president or authorized representative of Fiesta Pack during the taxable year 2000,[4] as alleged in the Information.

Not convinced, petitioner filed the instant Petition for Review on August 3, 2012, with the sole issue, to wit:

> THE SECOND DIVISION OF THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT CANCELLED THE DEFICIENCY TAX ASSESSMENT OF P18,267,953.15 ISSUED BY THE PETITIONER AGAINST RESPONDENT COVERING FISCAL YEAR 2000 ON THE GROUND THAT PRE-ASSESSMENT NOTICE WAS NOT RECEIVED BY THE RESPONDENT.

Petitioner insists that the deficiency assessments issued by the BIR became final, demandable and executory for failure of Fiesta Pack to dispute or file a protest against such assessment within the prescribed period and to pay the taxes due despite repeated demands. Moreover, the prosecution has sufficiently established that the PAN and the FAN were sent to Fiesta Pack, both through ordinary and registered mail.

Based on doctrine laid down in the case of *Republic vs. Tan Kim En*[5], the subject assessments issued by the BIR were duly sent by mail. In the said case, the Court of Appeals allegedly held that when an assessment is sent by mail, it is presumed that the taxpayer received it in due course of mail, thus if such presumed receipt is still within

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[4] *Rollo*, pp. 1111-1113.
[5] CA-GR No. 28743-R, February 29, 1964.

the prescriptive period, the taxpayer's contention that the Government's right to assess the tax has already prescribed cannot hold water.

Petitioner also invokes the case of *Commissioner of Internal Revenue vs. Dominador Menguito*[6], where the Supreme Court allegedly ruled that the absence of PAN would not affect the validity of the FAN.

Finally, all presumptions are in favor of the correctness of the assessment made by the BIR and it is for the taxpayer to prove the contrary.

For his part respondent Joseph Typingco raised the following counter-arguments:

I.

THE PETITION FOR REVIEW SHOULD BE SUMMARILY DISMISSED BY THE HONORABLE COURT CONSIDERING THAT IT IS FATALLY DEFECTIVE SINCE PETITIONER WAS NOT REPRESENTED BY THE OFFICE OF THE SOLICITOR GENERAL.

II.

IN ANY EVENT, THE HONORABLE COURT'S 2ND DIVISION CORRECTLY RULED THAT RESPONDENT TYPINGCO IS NOT CIVILLY LIABLE IN THE INSTANT CASE.

A. RESPONDENT TYPINGCO DID NOT RECEIVE THE PRELIMINARY ASSESSMENT NOTICE ("PAN") AND FINAL ASSESSMENT NOTICE ("FAN").

i. THE HONORABLE COURT'S 2ND DIVISION CORRECTLY RULED THAT RESPONDENT TYPINGCO

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[6] G.R. No. 167560, September 17, 2008.

DID NOT RECEIVE THE PAN AND FAN.

ii. CONTRARY TO THE CLAIM OF PETITIONER, THE FAILURE TO PROTEST THE ASSESSMENT DOES NOT RENDER THE SAME FINAL AND EXECUTORY.

iii. CONTRARY TO THE CLAIM OF PETITONER, THE CASE OF COMMISSIONER OF INTERNAL REVENUE VS. DOMINADOR MENGUITO, G.R. NO. 167560, 17 SEPTEMBER 2008, 461 SCRA 565, IS INAPPLICABLE TO THE INSTANT CASE.

B. RESPONDENT TYPINGCO IS NOT A RESPONSIBLE OFFICER WHO IS LIABLE UNDER SECTIONS 253 AND 256 OF THE NIRC.

THE RULING OF THE COURT *EN BANC*

There is no dispute that a PAN and a FAN were issued by the BIR assessing Fiesta Pack for deficiency taxes for the taxable year 2000. But were these PAN and FAN duly served upon Fiesta Pack or at least to respondent, whom petitioner claimed to be the President/authorized officer of Fiesta Pack as make full and complete compliance with the notice requirement mandated under Section 228 of the NIRC, as amended?

The answer is in the negative.

Section 228 of the NIRC, as amended, mandates that a taxpayer should be informed in writing of the law and the fact upon which the assessment is based, otherwise such assessment shall be invalid.

This mandate is echoed in Section 3 of Revenue Regulation 12-99[7] which provided the roadmap to ensure compliance with the procedural due process in the issuance of deficiency tax assessment, thus:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment.
>
> 3.1.1 Notice of informal conference. – The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of Division in the

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[7] REVENUE REGULATIONS NO. 12-99
SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

> National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
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> 3.1.2 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient bases to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the laws, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

While it appears that the BIR issued the subject PAN and the FAN, it was not established by sufficient and competent evidence - testimonial or documentary - that the said PAN and FAN were properly and duly served upon Fiesta Pack or at least respondent to have full and complete compliance with the mandatory due process requirement that will render the assessment valid.

Note that in the present case, Fiesta Pack and respondent denied receipt of the PAN and the FAN issued by petitioner who claimed the contrary. It was therefore incumbent upon the latter to prove that Fiesta Pack or respondent indeed received the assessment notices. But as found by the Court in Division, petitioner utterly failed in this regard.

Relevantly Section 13 of Rule 13 of the Rules of Court provides:

> SEC. 13. *Proof of Service*. - xxxx If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to addressee.

Corollary to the foregoing is Section 7 of the same Rule which states:

> SEC. 7. *Service by mail*.- Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

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Thus, to prove service by mail, the following evidence must be presented: (a) if by ordinary mail, an affidavit of the person stating the facts showing compliance with Section 7 of Rule 13 of the Rules of Court or (b) if by registered mail, an affidavit and the registry receipt issued by the mailing office and the registry return card or in lieu thereof, the unclaimed letter.

The import of proper service of a tax assessment was explained by the Supreme Court in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[8], in this wise:

> 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). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
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> > **"The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b)**

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[8] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.

> **that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie."** (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada*, 41 Phil. 269).

. . . . **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. This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing**. Thus:

> "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." (*Nava vs. CIR*, 13 SCRA 104, January 30, 1965).
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> xxx xxx xxx.
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> **The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued.** Consequently, the government's right to issue an assessment for the said period has already prescribed. (*Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR*, CTA Case 4885, August 22, 1996). (Emphases supplied.)

A second hard look on the evidence reveals that there was no proof that petitioner complied with the rules on proof of service of mail.

With respect to the PAN, no sufficient evidence was presented, i.e., the affidavit of person who caused the service by ordinary mail stating compliance with all the requirements of such service. The same is true with the FAN, which was allegedly sent by registered mail. There is no indication that petitioner was able to meet or satisfy the requirements under Section 7 of Rule 13 of the Rules of Court. Neither an affidavit nor registry return receipt was presented to prove its mailing to petitioner and receipt by the addressee. In other words, petitioner failed to establish by clear and convincing evidence that Fiesta Pack or respondent Typingco received the subject PAN and/or FAN, in accordance with the law and the rules and regulations on the matter.

In fact, the prosecution's witness, Ms. Teresita Maglunog during her cross-examination admitted that she has no record showing that the PAN was sent through ordinary mail. As to the FAN, she testified that although it was sent through registered mail on June 28, 2004, no registry return card was returned to her office to prove receipt by the addressee. She confessed that she only presumed receipt of the PAN and FAN when the two were not returned to her office.[9]

On this regard, the Court in Division made the following observation to which the Court En Banc agrees, thus:

> The prosecution's witness, Teresita Maglunog testified that the Preliminary Assessment Notice was sent through ordinary mail and the Final Assessment Notice was sent through registered mail. Accused denies the receipt of the PAN and the FAN.
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> It is a general rule that when service of notice is an issue, 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.
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> Pertinently, in civil cases, if the service is by ordinary mail, proof of service shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 of the Revised Rules of Court. On the other hand, if the service is made through registered mail, proof of service is the registry receipt issued by the mailing office and an affidavit of the person mailing of the facts showing compliance with the same Section 7 of the same rules. There is no reason to apply the same stringent rules in criminal action, if not, with more force in view of the fact that the

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[9] TSN, October 20, 2010, docket, pp. 596-629.

accused's life, liberty and property are at stake.

With respect to the Final Assessment Notice and the demand letters, the prosecution contends that they were sent through registered mail. As evidence, the prosecution presented the testimony of Teresita Maglunog, the copies of the Assessment Notices and demand letters, the Transmittal List or BIR Document Locator and registry receipt no. 828547.

As already mentioned, the Rules of Court requires the presentation of the registry receipt and affidavit of the person mailing as proof of service. However, the prosecution made no effort to present the testimony or even an affidavit of the person who allegedly mailed them.

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 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.

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. (Citations omitted)

Anent second argument, suffice it to say that there can be no final, executory and demandable assessment where there is no showing that the subject PAN and the FAN were properly and duly served upon the taxpayer concerned.

As earlier discussed, petitioner was not able to prove that the PAN and the FAN were sent and actually received by Fiesta Pack and/or respondent Typingco. Thus, respondent is correct in arguing that the assessments issued by the BIR cannot be considered as final, executory and demandable.

In *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[10], the Supreme Court emphasized that although there is no specific requirement that the taxpayer should receive the notice within the prescriptive period, due process requires at the very least that such notice actually be received. If it appears that the person liable for the payment did not receive the assessment, the assessment could not become final and executory. To quote:

> Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer actually receive said notice within the five-year period. It must be noted, however, that the foregoing rule requires that the notice be sent <u>to the taxpayer</u>, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period<u>, due process requires at the very least that such notice actually be received</u>.

[10]G.R. No. 155541, January 27, 2004.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, <u>due process requires that it must be served on and received by the taxpayer</u>.

In *Republic v. De le Rama,* we clarified that, when an estate is under administration, notice must be sent to the administrator of the estate, since it is the said administrator, as representative of the estate, who has the legal obligation to pay and discharge all debts of the estate and to perform all orders of the court. In that case, legal notice of the assessment was sent to two heirs, neither one of whom had any authority to represent the estate. We said:

The notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect. In the case of *Bautista and Corrales Tan v. Collector of Internal Revenue* ... this Court had occasion to state that <u>"the assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment</u>." <u>It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory.</u> (Citations omitted, underscoring supplied.)

As to petitioner's reliance on the ruling of the Supreme Court in the case of *CIR vs. Menguito*[11], the Court finds the same to be misplaced.

The Supreme Court in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[12] held:

> The case of *CIR v. Menguito* cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R.R. No. 12-85 which sought to interpret Section 229 of the old tax law. RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely notifying the taxpayer of the CIR's findings was changed in 1998 to informing the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid. The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.

Finally, while it is true that all presumptions are in favor of the correctness of tax assessments. Presumption of the correctness of an assessment being a mere presumption cannot be made to rest on another presumption[13]. Moreover, where taxpayer Fiesta Pack and respondent Typingco had specifically denied receipt of the assessment notices and demand letters issued by the BIR, such denial destroys the presumption of a prima facie correctness of the assessment[14] and therefore it was incumbent for respondent

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[11] *Supra*, note 7.
[12] G.R. No. 185371, December 8, 2010.
[13] Benipayo vs. Coll. of Int. Rev., G.R. L-13656, Jan. 31, 1962; Holland Milk Products vs. Comm. of Int. Rev., CTA 3756, Aug. 29, 1986; Liberty Insurance Corp. vs. Comm. of Int. Rev., CTA 3551 & 3599, Oct. 15, 1986.
[14] Knowles v. Govt., 60 Phil. 461.

to show that the assessment was based on hard actual facts and not upon presumptions.

WHEREFORE, the Petition for Review dated August 3, 2012 filed by the Prosecution is hereby **DENIED,** for lack of merit. Accordingly, the assailed Decision and Resolution promulgated on May 16, 2012 and July 2, 2012, respectively, of the Court in Division in CTA Crim. No. O-114, are hereby **AFFIRMED *in toto***.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice