REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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FACTORY AUTOMATION AND INSTRUMENTATION CORP., Petitioner,	**CTA EB No. 1335** (CTA Case No. 8518)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUL 07 2017 3:55 p.m.

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DECISION

UY, J.:

In this *Petition for Review* filed by Factory Automation Instrumentation Corporation, petitioner, on August 6, 2015 against the Commissioner of Internal Revenue, respondent[1], petitioner seeks to enjoin the enforcement of the Final Notice Before Seizure dated May 31, 2012 and/or Warrant of Garnishment/Levy0, and to declare the alleged deficiency tax assessment for taxable year 2008 amounting to ₱438,441.13 as void, cancelled and withdrawn.

In effect, the instant *Petition for Review* is assailing the Decision dated February 24, 2015[2] and Resolution dated July 6,

[1] EB Docket, pp. 6 to 25.
[2] EB Docket, pp. 27 to 39; Ponencia of Associate Justice Ma. Belen M. Ringpis-Liban, and concurred by Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino.

2015[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8518, entitled *"Factory Automation and Instrumentation Corp., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

Decision dated February 24, 2015:

> "**WHEREFORE,** the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Resolution dated July 6, 2015:

> "**WHEREFORE**, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

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.

Respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On August 3, 2009, the BIR Revenue Region No. 7, Revenue District Office No. 28 issued a *Tax Verification Notice* (TVN) No. 2003-00130732, authorizing Revenue Officer (RO) Ernesto B. Penullar to verify the supporting documents and/or pertinent records of "all internal revenue taxes" covering the taxable year 2008. On the same date, RO Penullar and Ester C. Maneja issued a *First Request for Presentation of Records.*

Subsequently, on August 18, 2009, the BIR issued a *Second*

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[3] EB Docket, pp. 41 to 46; *Supra.*

Request for Presentation of Records. Thereafter, Revenue District Officer (RDO) Benito B. Wong issued a *Final Notice Before Issuance of Subpoena Duces Tecum* on September 2, 2009.

On October 20, 2009, the Legal Division Chief, Atty. Jose Ric A. Cabrera, issued a *Subpoena Duces Tecum.* RDO Wong subsequently issued a *Notice of Informal Conference*, on December 5, 2009.

On May 23, 2011, petitioner received the *Preliminary Assessment Notice* (PAN) dated May 14, 2011, alleging that it is liable to pay an aggregate amount of ₱428,650.92, representing alleged deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax, Compromise Penalty and Interest.

On June 8, 2011, petitioner submitted the *Protest Letter* dated June 7, 2011 against the said PAN dated May 14, 2011.

On May 16, 2012, petitioner received the *Preliminary Collection Letter* (PCL) dated May 8, 2012 issued by Assistant RDO Buenaventura C. Lomibao, alleging that the *Assessment Notice* dated June 14, 2011 was previously issued against petitioner, and that the BIR is collecting internal revenue tax liabilities which remain unpaid in the aggregate amount of ₱438,441.13, representing alleged deficiency Income Tax, VAT, Expanded Withholding Tax, Compromise Penalty and Interest.

Consequently, petitioner filed an *Administrative Protest Letter* against the said PCL issued by respondent on June 14, 2012. Thus, on June 20, 2012, petitioner received the *Final Notice Before Seizure* dated May 31, 2012.

On July 19, 2012, petitioner filed a *Petition for Review* before the Court in Division and assigned to the then First Division of this Court (First Division), docketed as CTA Case No. 8518.

Respondent filed his *Answer* on September 10, 2012, interposing the following Special and Affirmative Defenses, to wit:

> "5. [He] reiterates and re-pleads the foregoing paragraphs of this Answer as part of [his] Special and Affirmative Defenses;
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> 6. All presumptions are in favor of the correctness of

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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 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 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 First Division in the Resolution dated December 28, 2012. On January 9, 2013, the First Division issued a *Pre-Trial Order*.

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Thereafter, trial of the case ensued. The parties presented and offered their respective documentary and testimonial evidence.

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

In the Resolution dated January 14, 2014, the parties were ordered to file their respective memorandum. And on March 26, 2014, petitioner filed a *Motion to Admit Memorandum with attached Memorandum*. However, based on the *Records Verification Report* dated March 17, 2014, respondent failed to file his *Memorandum*.

Thus, CTA Case No. 8518 was deemed submitted for decision in the Resolution dated May 6, 2014 issued by the Court in Division.

In the assailed Decision,[4] petitioner's *Petition for Review* was dismissed for lack of jurisdiction. The Court in Division pointed out that the FAN dated June 14, 2011 became final and executory within thirty (30) days from receipt thereof, or on June 21, 2011; and that when the said *Petition for Review* was filed on July 19, 2012, the FAN was already final and unappealable.

Petitioner filed its *Motion for Reconsideration* of the said Decision on March 13, 2015.[5] On July 6, 2015, the Court in Division rendered the assailed Resolution,[6] denying petitioner's *Motion for Reconsideration* for lack of merit.

Thereafter, on July 23, 2015, petitioner filed a *Motion For Extension of Time to File Petition for Review*,[7] praying for an additional period of fifteen (15) days from July 23, 2015 or until August 7, 2015, within which to file its *Petition for Review* before the Court *En Banc* under Rule 45 of the Revised Rules of Civil Procedure in relation to Rule 16 of the Revised Rules of the Court of Tax Appeals. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from July 23, 2015 or until August 7, 2015, within which to file the said *Petition for Review*.[8]

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[4] EB Docket, pp. 27 to 39; Division Docket (CTA Case No. 8518), pp. 431 to 443.
[5] Division Docket (CTA Case No. 8518), pp. 444 to 453.
[6] EB Docket, pp. 41 to 46; Division Docket (CTA Case No. 8518), pp. 458 to 463.
[7] EB Docket, pp. 1 to 3.
[8] EB Docket, p. 4.

On August 6, 2015, petitioner filed the instant *Petition for Review*. Subsequently, in the Resolution dated August 20, 2015,[9] the Court *En Banc* ordered respondent to file its *Comment* to the instant *Petition for Review* within ten (10) days from receipt thereof.

Respondent, however, filed a *Motion for Extension of Time To File Comment* on September 7, 2015,[10] praying for an extension of fifteen (15) days from this date within which to file an *Answer* in this case. The Court *En Banc* granted this *Motion*.[11] Nevertheless, respondent failed to file his *Comment* to the instant Petition for Review.[12] In the Resolution dated November 6, 2015,[13] the Court *En Banc* gave due course to the instant *Petition for Review*, and required the parties to submit their respective memorandum.

Petitioner filed its *Memorandum* on July 1, 2016;[14] while respondent failed to file his *Memorandum*.[15] Correspondingly, on July 8, 2016, this case was deemed submitted for decision.[16]

Hence, this Decision.

THE ISSUE

Culled from the allegations in the instant *Petition for Review* and petitioner's *Memorandum*, petitioner specifies the following issues to be resolved by the Court *En Banc*, to wit:

" 1. Whether petitioner was denied procedural due process.

2. Whether service of notices to Freddie Masula and Irene Masula who are not officers of Petitioner corporation or persons duly authorized by the corporation is valid service of notice to petitioner corporation.

3. Whether the assessments for alleged deficiency Income Tax, VAT, Expanded Withholding Tax, Compromise Penalty and Interest have prescribed.

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[9] EB Docket, pp. 49 to 50.
[10] EB Docket, pp. 51 to 53.
[11] Minute Resolution dated September 9, 2015; EB Docket, p. 54.
[12] Records Verification dated October 15, 2015 issued by the Judicial Records Division (JRD) of this Court, EB Docket, p. 56.
[13] EB Docket, pp. 59 to 60.
[14] EB Docket, pp. 61 to 80.
[15] Records Verification dated July 4, 2016 issued by the JRD of this Court, EB Docket, p. 81.
[16] Resolution dated July 8, 2016, EB Docket, pp. 84 to 85.

4. Whether petitioner is estopped from claiming or contending lack of notice."[17]

Petitioner's arguments:

Petitioner contends that it was denied procedural due process as it did not receive any FAN or FLD before the FNBS dated May 31, 2012 was served on June 20, 2012. Considering that there is no sufficient evidence that it received the FAN and FLD, the same has not become final and executory.

According to petitioner, the Court in Division erroneously concluded that petitioner's denial in receiving the FAN, FLD with attached Details of Discrepancies, all dated June 14, 2011, were satisfactorily controverted by respondent, holding that the said documents were indeed received personally and through registered mail by petitioner. Thus, petitioner begs for the reversal of the foregoing findings.

Petitioner argues that since the designation or authority of "Freddie Masula" to act on behalf of petitioner was never shown from respondent's Exhibits "6", "7", "8", "9", "10" and "11", proper personal service of the FAN and FLD was not complied with.

Furthermore, petitioner avers that respondent's presentation of the certification issued by the Postmaster of Novaliches and the testimony of Mr. Arnold C. Larrosa merely raised a presumption that the FAN and FLD was duly received by petitioner. Allegedly, service must be made on a representative so integrated with the corporation as to make it *a priori* supposable that he will realize his responsibilities and know what he should do with any legal papers served on him. In this case, p*etitioner* points out that based on the testimony of the postman, the mail sent by respondent allegedly containing the FAN and FLD was handed over to a certain "Irene Masula – Mother", who is clearly not the petitioner or a duly authorized representative of petitioner corporation.

It is to be noted that the FAN was allegedly first served upon Freddie Masula; and then, subsequently by registered mail which was received by Irene Masula. The circumstance that the said FAN was first served personally and then again by registered mail shows that respondent came to realize that the personal service upon Freddie Masula was not effective and valid service. Service by registered mail was likewise not effected and valid for having been received by

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[17] Petitioner's Memorandum, at p. 3, EB Docket, p. 63

Irene Masula, who like Freddie Masula, is not an officer of petitioner corporation and not duly authorized to receive such important and delicate matter, such as a FAN.

And since the alleged FAN and FLD were not established to have been duly received by petitioner, the right of respondent to assess alleged tax deficiencies for calendar year 2008 has already prescribed.

Finally, petitioner also claims that the application of the principle of estoppel has no basis and is unwarranted.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Modes of sending the FLD and FAN and strict compliance therewith

Section 228 of the NIRC of 1997 provides as follows:

> "SEC. 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: xxx
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> xxx xxx xxx
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> The taxpayer 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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> 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. xxx.
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> xxx xxx xxx." *(Emphasis supplied)*

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Relative thereto, the *"implementing rules and regulations"* referred to in the foregoing provision is embodied in Revenue Regulations (RR) No. 12-99,[18] which lays down, under Section 3 thereof, the due process requirement in the issuance of a deficiency tax assessment, to wit:

> "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:
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> xxx xxx xxx
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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 basis 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 law, 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 payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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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*

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[18] SUBJECT: Implementing the Provision of the National Internal Revenue Code of 1997 Governing the Rules of 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.

> *notice shall be void* (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**" *(Emphases supplied)*

Based on the above-quoted Section 3.1.4 of RR 12-99, there are only two (2) modes by which the FLD and FAN may be sent to the taxpayer, to wit: (1) through registered mail, or (2) by personal service.

In case of personal service, the said Section 3.1.4 is very specific: it is required that the taxpayer or his duly authorized representative shall acknowledge receipt of the said FLD in the duplicate copy thereof, showing the following: (a) His name, (b) signature, (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself, and (d) the date of receipt thereof.

Upon the other hand, in case of service through registered mail, the same Section 3.1.4 is plain that it must be sent to the taxpayer, not to any other person. Thus, if the taxpayer is an individual, the FLD must be sent to him or her alone. However, in the case of a corporate taxpayer, the FLD must be, in all cases, received by its individual representative(s). This is so because the physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[19]

The question now is whether or not strict compliance with the foregoing requirements is necessary.

While taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude.[20] Even as We concede the inevitability and indispensability of taxation, it is a requirement in

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[19] *Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila*, G.R. No. 181277, July 3, 2013.

[20] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010

all democratic regimes that **it be exercised reasonably and in accordance with the prescribed procedure.**[21]

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the Commissioner of Internal Revenue to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process.**[22]

Guided by the foregoing principles, We shall determine whether or not petitioner was accorded procedural due process.

Service of the FLD and the FAN through registered mail was made in accordance with RR 12-99.

In this case, petitioner denies having received the subject FLD and FAN, either by personal service or through registered mail.

Thus, to prove that personal service of the FLD and FAN was made to petitioner, respondent, in his *Formal Offer of Evidence*,[23] offered in evidence the following Exhibits, to wit:

Exhibit	Description	Purpose
"6"	Final Assessment Notice for Deficiency Income Tax Page 259 of BIR Records	To prove that a Final Assessment Notice for Deficiency Income Tax was duly issued against Petitioner
"6-A"	Stamp Received **with name, signature and date of receipt** of the Final Assessment Notices for Deficiency Income Tax, Deficiency Value Added Tax and Deficiency Expanded Withholding Tax and Compromise Penalty by Freddie Masula Page 259 of BIR Records	To prove that the Final Assessment Notices for Deficiency Income Tax, Deficiency Value Added Tax and Deficiency Expanded Withholding Tax were duly received by the Petitioner through Freddie Masula.
"10"	Formal Letter of Demand Page 253-254 of BIR Records	To prove that a Formal Letter of Demand was duly issued against Petitioner
"10-A"	Stamp Received **with name, signature**	To prove that the Formal

[21] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, citing *Commissioner of Internal Revenue vs. Algue, Inc.*, 241 Phil. 829, 836 (1988).
[22] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, supra, citing *Tupas v. Court of Appeals*, G.R. No. 89571, February 6, 1991.
[23] Division Docket (CTA Case No. 8518), pp. 373 to 374.

	and date of receipt of the Formal Letter of Demand by Freddie Masula Page 254 of BIR Records	Letter of Demand was duly received by the Petitioner through Freddie Masula

On the basis of respondent's description and upon a cursory examination of the said Exhibits "6-A" and "10-A", it can be surmised that respondent did not comply with the earlier-quoted Section 3.1.4 of RR 12-99, concerning personal service of the FLD and FAN. This must be so because while the said Exhibits show the date of receipt and that a certain "Freddie Masula" received the said documents, **no statement regarding his designation and authority to act for and in behalf of petitioner was mentioned**.

Thus, the Court *En Banc* finds that for lack of strict compliance with the information required under Section 3.1.4 of RR 12-99, **there was no valid personal service of the subject FLD and FAN**.

Anent the sending of the FAN and FLD through registered mail, it must be remembered that it is a disputable presumption that *"a letter duly directed and mailed was received in the regular course of the mail".*[24] The facts to be proved to raise this presumption, however, are (1) that the letter was properly addressed with postage prepaid, and (2) 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 mails. But if one of the said facts fails to appear, the presumption does not lie.[25]

Moreover, while it is correct that a mailed letter is deemed received by the addressee in the ordinary course of the mail, still, **this is 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.[26] In other words, if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed **<u>received by the addressee</u>**. Here, the *onus probandi* has shifted to the BIR **<u>to show by contrary evidence</u>** that

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[24] Section 3(v), Rule 131 of the Rules of Court; Refer also to *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.

[25] *Nava vs. Commissioner of Internal Revenue*, G.R. No. L-19470, January 30, 1965; *Protector's Services, Inc. vs. Court of Appeals, et al.*, G.R. No. 118176, April 12, 2000; *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

[26] *Republic of the Philippines vs. Court of Appeals, et al.*, G.R. No. L-38540, April 30, 1987.

petitioner indeed received the assessment in the due course of the mail.[27]

As a corollary, 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. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other document executed with its intervention.[28]

In this case, respondent, also in his *Formal Offer of Evidence*,[29] further offered in evidence the following Exhibits to prove the receiving of the PAN, FLD and FAN by registered mail, to wit:

Exhibit	Description	Purpose
"13"	Transmittal list of the service of Preliminary Assessment Notice through registered mail.	To prove that the Preliminary Assessment Notice was duly served through registered mail under Registry Receipt No. 3284 and duly received by the BIR Post Office on May 18, 2011
"14"	Transmittal list of the service of Final Assessment Notices through registered mail.	To prove that the Final Assessment Notices with Formal Letter of Demand and Details of Discrepancies were duly served through registered mail under Registry Receipt No. 4298 and duly received by the BIR Post Office on June 15, 2011
"15"	Certification issued by the Office of the Postmaster of the Novaliches Post Office	To prove that Registered Mail No. 3284 was duly served and received by Petitioner through Masula (Preliminary Assessment Notice).
"16"	Certification issued by the Office of the Postmaster of the Novaliches Post Office	To prove that Registered Mail No. 4298 was duly served and received by Petitioner through Irene Masula (Final Assessment Notices with Formal Letter of Demand and Details of Discrepancies).
"17"	Judicial Affidavit of Arnold C. Larrosa	To form part of the testimony of Arnold C. Larrosa. To prove that the Preliminary Assessment Notices and Final Assessment Notices with Formal Letter of Demand and Details of Discrepancies were duly served and received by Petitioner.
"18"	A copy of a portion of the delivery book of Postman	To form part of the testimony of RO Ferdinand P. Pacada.

[27] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[28] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, supra.
[29] Division Docket (CTA Case No. 8518), pp. 375 to 377.

	Ferdinand P. Pacada	To prove that Registered Letter No. 3284 (Preliminary Assessment Notice) was duly served and received by Petitioner through Irene Masula.
"19"	A copy of a portion of the delivery book of Postman Ferdinand P. Pacada	To form part of the testimony of RO Ferdinand P. Pacada. To prove that Registered Letter No. 4298 (Final Assessment Notices with Formal Letter of Demand and Details of Discrepancies) were duly served and received by Petitioner through Irene Masula.
"19-A"	Portion of Exhibit "19"	To form part of the testimony of RO Ferdinand P. Pacada. To prove that Registered Letter No. 4298 (Final Assessment Notices with Formal Letter of Demand and Details of Discrepancies) were received by Irene Masula.

On the basis of Exhibits "14" and "16",[30] respondent was able to show that the FLD and FAN was delivered to petitioner **on June 21, 2011**, through a certain "IRENE MASULA – mother".

Relative to the said individual, petitioner points out that this person is not petitioner or its duly authorized representative; and that it, as a juridical entity, has no mother. However, the Court *En Banc* is convinced that this Irene Masula has authority to bind petitioner in receiving the FLD and FAN by registered mail, either by acquiescence or through estoppel.

Notably however, the receipt of correspondence from the BIR by petitioner, through "Irene Masula" has a glaring precedent. Particularly, as already observed by the Court in Division, the said individual has previously received the PAN addressed to petitioner. Thereafter, petitioner was able to file its protest to the said PAN on June 8, 2011.

In this connection, the following facts are clearly established in relation to the receipt of the PAN, to wit: (1) the PAN addressed to petitioner was transmitted for mailing, having as reference Registry No. 3284;[31] (2) the same was delivered by the Philippine Postal Corporation, and was received by the same Irene Masula on May 23, 2011;[32] (3) the date of receipt was confirmed to have been received

[30] Division Docket (CTA Case No. 8518), pp. 358 and 360, respectively.
[31] Exhibit "13", Division Docket (CTA Case No. 8518), p. 357.
[32] Exhibit "15", Division Docket (CTA Case No. 8518), p. 359.

by petitioner on May 23, 2011, as judicially admitted by the parties;[33] and (4) petitioner was able to file its protest to the said PAN on June 8, 2011.[34]

On the basis of these circumstances, the inevitable conclusion is that Irene Masula had the authority to receive notices from the BIR. Correspondingly, the Court *En Banc* finds that the subject FLD and FAN were effectively received by, or delivered to, petitioner on June 21, 2011, also through Irene Masula. As there is no showing that petitioner filed a protest against the said FLD and FAN within 30 days from receipt thereof, the subject tax assessments have attained finality.

Thus, the Court in Division correctly dismissed CTA Case No. 8518 for lack of jurisdiction.

The subject tax assessments have not prescribed.

Petitioner further raises the issue of prescription.

As will be shown below, however, this issue is of no consequence and thus, will have no effect as to the finality of the subject tax assessments.

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment taxes, to wit:

> "SEC. 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. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.**" *(Emphases supplied)*

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[33] Paragraph 9, Joint Stipulation of Facts and Issues, Division Docket (CTA Case No. 8518), p. 108.
[34] Exhibit "K", Division Docket (CTA Case No. 8518), p. 242.

The above provision mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.

To reiterate, the instant case involves assessments for deficiency income tax, VAT, EWT, compromise penalty and interest for taxable year 2008.

The dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency taxes, are the following:

INCOME TAX RETURN (BIR FORM 1702)			
Period	**Date Filed**	**Last Day to File Return**[35]	**Last Day to Assess under Section 203**
Taxable year 2008	April 15, 2009[36]	April 15, 2009	April 15, 2012

Period (2008)	**Date Filed**	**Last Day to File Return**[37]	**Last Day to Assess under Section 203**
1st Quarter	April 25, 2008[38]	April 25, 2008	April 25, 2011
2nd Quarter	July 25, 2008[39]	July 25, 2008	July 25, 2011
3rd Quarter	October 24, 2008[40]	October 25, 2008	October 25, 2011
4th Quarter	January 23, 2009[41]	January 25, 2009	January 25, 2012

EWT RETURNS (BIR FORM 1601-E)			
Period (2008)	**Date Filed**	**Last Day to File Return**[42]	**Last Day to Assess under Section 203**

[35] Pursuant to Section 77 of the NIRC of 1997, a corporate taxpayer shall file its final adjustment return (annual income tax return) on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year.
[36] Exhibit "O", Division Docket (CTA Case No. 8518), p. 251.
[37] Section 114(A) of the NIRC of 1997, as amended by Republic Act No. 9337, requires that Quarterly VAT Returns should be filed within twenty-five (25) days following the close of each taxable quarter.
[38] Exhibit "T", Division Docket (CTA Case No. 8518), p. 269.
[39] Exhibit "S", Division Docket (CTA Case No. 8518), p. 267.
[40] Exhibit "R", Division Docket (CTA Case No. 8518), p. 262.
[41] Exhibit "Q", Division Docket (CTA Case No. 8518), p. 261.
[42] For both large and non-large taxpayers, the withholding tax return, whether creditable or final shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year,

January	February 8, 2008[43]	February 10, 2008	February 10, 2011
February	March 7, 2008[44]	March 10, 2008	March 10, 2011
March	April 10, 2008[45]	April 10, 2008	April 10, 2011
April	May 9 2008[46]	May 10, 2008	May 10, 2011
May	June 10, 2008[47]	June 10, 2008	June 10, 2011
June	July 9, 2008[48]	July 10, 2008	July 10, 2011
July	August 8, 2008[49]	August 10, 2008	August 10, 2011
August	September 10, 2008[50]	September 10, 2008	September 10, 2011
September	October 10, 2008[51]	October 10, 2008	October 10, 2011
October	November 7, 2008[52]	November 10, 2008	November 10, 2011
November	December 10, 2008[53]	December 10, 2008	December 10, 2011
December	January 9, 2009[54]	January 15, 2008	January 15, 2012

Based on the foregoing tables, considering that the FLD and FAN were received by petitioner on June 21, 2011, the deficiency VAT assessment for the 1st quarter of 2008, and the deficiency EWT assessments for the months of January to May of the same year, were issued beyond the 3-year prescriptive period pursuant to the aforequoted Section 203 of the NIRC of 1997. Thus, the said assessments are deemed invalid.

As a corollary, the deficiency income tax assessment, the deficiency VAT assessment for the 2nd, 3rd, and 4th quarters of 2008, and the deficiency EWT assessment for the months of June to December of the same year, were issued within the period to assess under the same Section 203 of the NIRC of 1997. Correspondingly, these assessments are considered valid.

Be that as it may, notwithstanding the above-stated findings of the Court *En Banc* that there are certain periods which have prescribed, petitioner has not shown as to which portion of the assessments pertain to the prescribed periods. Correspondingly, as all presumptions are in favor of the correctness of tax

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which shall be filed on or before January 15 of the following year. (Section 2.58(A)(2)(a), Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-03).

[43] Exhibit "V-1", Division Docket (CTA Case No. 8518), p. 280.
[44] Exhibit "W-1", Division Docket (CTA Case No. 8518), p. 282.
[45] Exhibit "X-1", Division Docket (CTA Case No. 8518), p. 284.
[46] Exhibit "Y-1", Division Docket (CTA Case No. 8518), p. 286.
[47] Exhibit "Z", Division Docket (CTA Case No. 8518), p. 288.
[48] Exhibit "AA-1", Division Docket (CTA Case No. 8518), p. 290.
[49] Exhibit "BB-1", Division Docket (CTA Case No. 8518), p. 292.
[50] Exhibit "CC-1", Division Docket (CTA Case No. 8518), p. 293.
[51] Exhibit "DD-1", Division Docket (CTA Case No. 8518), p. 295.
[52] Exhibit "EE-1", Division Docket (CTA Case No. 8518), p. 297.
[53] Exhibit "FF-1", Division Docket (CTA Case No. 8518), p. 299.
[54] Exhibit "GG-1", Division Docket (CTA Case No. 8518), p. 301.

assessments,[55] the Court *En Banc* shall treat all of the subject tax assessments as referring to the unprescribed portions.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated February 24, 2015 and Resolution dated July 6, 2015 rendered by the Court in Division in CTA Case No. 8518 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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55 *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 134062, 17 April 2007; *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue,* G.R. No. 168498, 24 April 2007.

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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

FACTORY AUTOMATION AND INSTRUMENTATION CORP., *Petitioner,*	**CTA EB NO. 1335** (CTA CASE NO. 8518)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 07 2017 3:55 p.m.

X---X

CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the conclusion of the *ponencia* in denying the Petition for Review and in affirming the assailed Decision and Resolution of the Court in Division.

I respectfully adopt, however, the factual findings/premise discussed in the assailed Resolution, which led the Court in Division to conclude that both Irene Masula and Freddie Masula received on behalf of petitioner, the Preliminary Assessment Notice (PAN), the Formal Letter of Demand (FLD), and Formal Assessment Notice (FAN), *viz*:

> "Records show that the FAN and FLD with attached Details of Discrepancies, were all served to the office address of petitioner at '113 Gerryville Subd., Damong Maliit, Brgy. Nagkaisang Nayon, Novaliches, Quezon City' on June 15, 2011 and were all received by one Freddie Masula. Likewise, the Preliminary Assessment

Notice (PAN) was delivered and served to the same office address and was received by the same person, Freddie Masula.

Likewise, respondent satisfactorily established that petitioner received the FAN and FLD with attached Details of Discrepancies through registered mail.

Records reveal that both PAN and FAN were mailed to petitioner at its office address with Registry Nos. 3284 and 4298, respectively. As certified by the postmaster, the registered letters with numbers 3284 or 2384 and 3298 addressed to Factory Automation & Instrumentation Corp. of 113 Gerryville Subd., Damong Maliit, Brgy. Nagkaisang Nayon, Novaliches, Quezon City were delivered by letter carrier Ferdinand P. Pacada and duly received by Mrs. Irene Masula – mother on May 23, 2011 and on June 21, 2011, respectively.

xxx xxx xxx

The peculiarity of this case is that the same persons who received the FAN and FLD, i.e. Freddie Masula through personal service and Mrs. Irene Masula through registered mail were the same persons who received the PAN. Petitioner admitted the receipt of the PAN on May 23, 2011, the same day appearing on the certification issued by the postmaster.

Consequently, petitioner is estopped from claiming that Freddie Masula and Irene Masula had no authority to receive these notices when they were the ones who received the PAN and petitioner admitted the receipt thereof. In fact, petitioner was able to file a Protest Letter against the PAN on June 8, 2011. In addition, all the required notices were delivered to the same offce address of petitioner.

'Estoppel, an equitable principle rooted upon natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them.'

xxx xxx xxx

The fact that petitioner did not deny the receipt of the PAN by Freddie Masula and Irene Masula and it was able to file a Protest Letter against the same on June 8, 2011 lead a person to believe that those persons are authorized to receive notices on behalf of petitioner. Since the same people received the FAN and FLD when it was served upon petitioner, there is a presumption that there was proper service to petitioner. Thus, petitioner is now estopped from claiming that it did not receive the FAN and FLD.

The pieces of evidence when taken together support the finding that indeed petitioner received the FAN and FLD through personal service and registered mail. Clearly, there was no denial of due process.

cm

Based on the aforequoted portion of the said Resolution, it is clear that petitioner was able to receive the PAN, FLD and FAN from the Bureau of Internal Revenue; hence, there was no denial of procedural due process.

All told, I **VOTE** to **DENY** the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice