REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

SVI TECHNOLOGIES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8488

Members:

Bautista*, Chairperson*
Fabon-Victorino*, and*
Ringpis-Liban*, JJ.*

Promulgated:

FEB 02 2015
1:04 p.m.

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DECISION

BAUTISTA, J:

The Case[1]

This is a Petition for Review under Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, in relation to Section 4[2] of the National Internal Revenue Code ("1997 NIRC") and Section 7 of Republic Act ("RA") No. 1125,[3] as amended by RA No. 9282, to appeal and question the Warrant of Distraint and/or Levy ("WDL") issued by respondent, through BIR Revenue

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[1] *Records*, CTA Case No. 8488, pp. 1-2.

[2] Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[3] Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x"

District Office ("RDO") No. 43A of East Pasig City, dated April 12, 2012, for the aggregate amount of Php49,213,751.63, inclusive of interest, representing alleged deficiency income tax, value-added tax ("VAT") and expanded withholding tax ("EWT") for taxable year 2006.

The Parties[4]

Petitioner SVI Technologies, Inc. ("SVI") is a corporation organized and existing under the laws of the Philippines with office address at 6th Floor JMT Building, 27 ADB Avenue, Ortigas Center, Pasig City.

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

The Facts

As stated in the Joint Stipulation of Facts and Issues ("JSFI") dated November 13, 2012,[5] the factual antecedents of this consolidated case are as follows:

> "3. Petitioner received Letter of Authority No. 00009340 dated September 7, 2007 ('Letter of Authority') from the Bureau of Internal Revenue ('BIR'), authorizing the examination of petitioner's books of accounts and other financial records for all internal revenue taxes for taxable year 2006.
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> 4. On May 5, 2009, petitioner received a Notice for Informal Conference dated April 24, 2009 ('Notice for Conference') from RDO No. 43. The Notice for Conference, pursuant to the Letter of Authority, informed petitioner of its supposed deficiency income tax, value-added tax ('VAT'), expanded withholding tax ('EWT') and withholding tax on compensation ('WTC') liabilities for taxable year 2006.

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[4] *Id., Joint Stipulation of Facts and Issues* ("JSFI"), pp. 134-141.
[5] *Id.*

5. On December 18, 2009, petitioner received a Preliminary Assessment Notice ('PAN'), dated December 3, 2009, from Mr. Jonas P. Amore, the Officer-in-Charge, Assistant Regional Director of BIR Revenue Region No. 7. The PAN informed petitioner of its alleged deficiency income tax, VAT, EWT and WTC liabilities amounting to P51,431,505.62, inclusive of interest.

6. Petitioner replied to the PAN through a letter dated January 6, 2010 ('Reply') addressed to Mr. Antonio F. Montemayor, the Regional Director of BIR Revenue Region No. 7, which respondent received on January 8, 2010.

7. On March 12, 2012, more than two (2) years after petitioner received the PAN, petitioner received a Final Notice Before Seizure ('Final Notice') from Mr. Florante Aninag, the Revenue District Officer of RDO No. 43A of East Pasig City, reiterating the alleged tax deficiencies of petitioner. Attached to the Final Notice was a Preliminary Collection Letter ('PCL').

8. Based on the PCL received by petitioner, there is allegedly due from petitioner, for taxable year 2006, deficiency taxes in the aggregate amount of P49,213,751.63, exclusive of interest, as follows:

<u>Income Tax</u>		
Basic	P	5,769,167.83
Interest		3,240,217.55
Subtotal	P	9,009,385.38
<u>Value-Added Tax</u>		
Basic	P	24,909,885.79
Interest		15,082,424.00
Subtotal	P	39,992,309.79
<u>Withholding Tax - Expanded</u>		
Basic	P	131,633.69
Interest		80,422.77
Subtotal	P	212,056.46
TOTAL	**P**	**49,213,751.63**

9. On April 12, 2012, petitioner received the now assailed Warrant of Distraint and/or Levy ('WDL'), which sought to distrain and/or levy the personal and/or real property of petitioner for the collection of the alleged deficiency income tax, VAT and EWT in the aggregate amount of P49,213,751.63. "

Thus, petitioner filed on May 11, 2012 its Petition for Review,[6] praying that the Court declare petitioner not liable for the alleged deficiency income tax, VAT and EWT for taxable 2006, and that the assailed Warrant of Distraint and/or Levy be withdrawn and cancelled.

On June 13, 2012, respondent filed her Answer,[7] interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

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

6. Herein petitioner is presumed to have received the Final Assessment Notice, Formal Letter of Demand and Details of Discrepancies. As such, he is presumed to have been fully apprised of the facts and the law upon which the Final Assessment was based;

    6.1. Respondent maintains that [p]etitioner was informed that based on the verification conducted by the examiner concerned, it failed to subject the following income payments to withholding taxes as required under Revenue Regulations No. 2-98: a) cost of services and operating expenses amounting to P1,343,865.90;

[6] *Id.*, pp. 1-17, with attachments.
[7] *Id.*, pp. 88-93.

b) rent and utilities amounting to P422,913.41, and c) commissions amounting to P836,107.00. Thus, the amounts were disallowed as deductions from the gross income pursuant to Section 34(K) of the NIRC of 1997. Hence, the Deficiency Income Tax of P2,602,886.31;

6.2. Verification by the examiner concerned, likewise, disclosed that [p]etitioners representation and entertainment expense based on its Financial Statements exceeded the statutory limit. Thus pursuant to Revenue regulations No. 10-2002, the excess amount totaling P280,480.81 was assessed as a non-deductible representation expense;

6.3. It was already disclosed during verification that income payments subject to withholding tax on compensation amounting to P3,409,142.29 was not fully reported in the financial statements and were considered as unaccounted source of cash which led to the inference that part of petitioners income were not declared as enunciated in the case of Perez vs. CTA & CIR, L-10507;

6.4. Petitioner, based on verification, failed to establish the basis used in the computation of claimed depreciation. Thus, pursuant to Section 34(F) of the NIRC of 1997, as amended, the amount of P3,272,047.00 was disallowed;

6.5. Verification also disclosed that petitioner failed to submit adequate documentary evidence to support its claimed Net Operating Loss Carry-Over. Hence, the amount of P6,361,485.00 was disallowed pursuant to Section 34(D)(3) of the NIRC of 1997, as amended;

6.6. Petitioner, as disclosed during verification, failed to submit adequate documentary evidence to support the claimed infrastructure expense amounting to P586,294.00. Hence, said amount was disallowed pursuant to Section 34(A) of the NIRC of 1997, as amended;

6.7. As to Value Added Tax, it was disclosed that the amount of P27,164,233.00 representing taxable sales/receipts and other income were not subjected to VAT and therefore assessed pursuant to Sections 106 and 108 of the NIRC of 1997, as amended;

6.8. It was also disclosed that the income payments subject to withholding tax on compensation amounting to P3,409,142.29 was not fully reported in the financial statements and were considered as unaccounted income subject to VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended;

6.9. Petitioner, based on verification, failed to submit the necessary documentary evidence on the claimed tax credits per VAT returns. Hence, the amount of P21,003,197.68 was disallowed pursuant to Sections 110, 113 and 237 of the NIRC of 1997, as amended Revenue regulations No. 28-03;

6.10. Verification, likewise, disclosed that [p]etitioner failed to subject following income payments to withholding taxes as required under Revenue Regulations No. 2-98: a) cost of services and operating expenses amounting to P1,343,865.90; b) rent and utilities amounting to P422,913.41, and c) commissions amounting to P836,107.00. Thus, the amounts were assessed as deficiency Expanded Withholding Tax;

6.11. The amount of P2,096,763.72 was assessed pursuant to Revenue Regulations No. 2-98 as under remittance on Withholding Tax on Compensation:

7. The Assessment has already become Final and Demandable. Not only are the Notice of Assessment, Formal Letter of Demand and Details of Discrepancies which were issued by the Assessment Division and received by the Post Office on January 4, 2010 presumed to have been received by the [p]etitioner,

> but also, Petitioner failed to establish and supplement its claim that it did not receive the aforementioned documents. Thus, [p]etitioner is deemed to have waived its right to protest the assessment within the Statutory period of thirty (30) days as provided for under Section 228 of the NIRC of 1997, as amended, which provides:
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> > 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 a form and manor as may be prescribed by the implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> 8. Taxpayer must establish by sufficient and competent evidence that its petition is valid and binding;"

On July 4, 2012, petitioner filed a Comment/Opposition [To Respondent's Manifestation with Motion to Admit Attached Answer dated June 13, 2012].[8]

On November 13, 2012, the parties filed their Joint Stipulation of Facts and Issues,[9] and thus a Pre-Trial Order[10] was issued on November 27, 2012.

On January 11, 2013, petitioner filed its Formal Offer of Evidence,[11] which was resolved by the Court on February 14, 2013.[12]

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[8] *Id.*, pp. 97-100.
[9] *Id.*, pp. 134-141.
[10] *Id.*, pp. 242-247.
[11] *Id.*, pp. 310-318.
[12] *Id.*, pp. 439-440.

On the other hand, respondent filed her Formal Offer of Evidence[13] on August 6, 2013. In response, petitioner filed a Comment (on Respondent's Formal Offer of Evidence August 2, 2013).[14]

On September 26, 2013, the Court issued a Resolution on respondent's Formal Offer of Evidence,[15] as well as ordering the parties to file simultaneously within thirty (30) days their respective memorandum.

On October 1, 2013, respondent filed a Motion for Reconsideration (Resolution of 26 September 2013), praying that the denied exhibits be admitted.[16]

Meanwhile, petitioner filed its Memorandum on October 29, 2013.[17]

On January 17, 2014, the Court issued a Resolution granting the Motion for Reconsideration (Resolution of 26 September 2013).[18]

On January 29, 2014, respondent filed its Memorandum.[19]

Thus on February 5, 2014, the Court promulgated a Resolution[20] submitting the case for Decision.

Hence, this Decision.

The Isssues[21]

Based on the JSFI filed on November 13, 2012, the issues to be resolved are as follows:

[13] *Id.*, pp. 489-493.
[14] *Id.*, pp. 562-564.
[15] *Id.*, pp. 566-567.
[16] *Id.*, pp. 568-573.
[17] *Id.*, pp. 577-602.
[18] *Id.*, pp. 641-642.
[19] *Id.*, pp. 645-653.
[20] *Id.*, p. 657.
[21] *Id.*, pp. 136.

"II.

STIPULATION OF ISSUES

1. Whether or not the petitioner is liable to pay the questioned deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation and Expanded Withholding Tax.

2. Whether or not the WDL is null and void, having been prematurely issued, as tax delinquency has not set in since petitioner never received a FAN from respondent.

3. Whether or not the period within which respondent may assess petitioner for alleged deficiency internal revenue taxes for taxable year 2006 has already prescribed.

4. Whether or not petitioner filed the Petition for Review within the statutory period of thirty (30) days."

The Ruling of the Court

The Court finds merit in the Petition for Review.

As there is an allegation that a FAN was not received by petitioner, the Court deems it proper to resolve this before delving into the other matters.

Petitioner states that it did not receive a FAN covering the alleged deficiency taxes for taxable year 2006, in violation of the due process requirements of Section 228 of the 1997 NIRC, thus making the WDL issued for the collection, null and void.[22] Petitioner also states that in case of a denial of receipt of the alleged FAN, the burden to prove such was issued and received by taxpayer shifts to respondent.[23]

[22] *Id.*, p. 583.
[23] *Id.*, p. 587.

On the other hand, respondent alleges that she duly issued and sent through registered mail the said FAN.[24] In support, respondent cites the Judicial Affidavit of Mr. Arnold Larroza, Administrative Aide II of the Revenue Region No. 7 Quezon City of the BIR.[25] In the said affidavit, Mr. Arnold Larroza states that upon endorsement of the Assessment Division, he personally places notices such as PANs and FANs into envelopes which he brings to the Post Office to mail them through registered mail.[26] Upon mailing, the Post Office stamps receive the said endorsement.

In particular to the case of petitioner, a certified true copy of the stamped endorsement was produced, as well as a certification by the Pasig City Central Post Office stating that the said FAN was mailed and duly-received by S/G Macavinta, Jr. on January 12, 2010.[27] Thus, respondent states that the FAN was duly issued and mailed, it should be considered valid. Also, since no protest was filed, that the said assessment is now final and executory.[28]

The Court is not persuaded with the explanation of respondent.

It is enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.[29] While "taxes are the lifeblood of the government," the power to tax has its limits, to safeguard the interests of the taxpayers. In the case of *Commissioner of Internal Revenue v. Algue, Inc.*,[30] the Supreme Court held that:

> "Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

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[24] *Id.*, p. 649.
[25] *Id.*, p. 649.
[26] *Id.*
[27] *Id.*, p. 650.
[28] *Id.*, p. 652.
[29] Section 1, Article III, 1987 Constitution.
[30] 241 Phil. 829 (1988).

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. x x x (*Emphasis supplied*)

In the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.,) v. Commissioner of Internal Revenue,*[31] the Supreme Court held:

"In its Decision, the CTA resolved the issues raised by the parties thus:

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

[31] G.R. No. 157064, August 7, 2006, 498 SCRA 126. Citations omitted.

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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xxx. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. xxx.

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In *Protector's Services, Inc. v. Court of Appeals,* this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."

For emphasis, the presumption of regularity in the ordinary course of mail is merely disputable, and when the taxpayer-addressee denies the receipt of the disputed assessment – delivered and served through registered mail - issued by respondent against the taxpayer-addressee, the burden of proof is now shifted to respondent to present and offer evidence to prove that the same was duly delivered and indeed received by the taxpayer-addressee.

Based on the records, respondent submitted the said Judicial Affidavit of Mr. Arnold Larroza[32] in addition to a Certification from Ms. Sherlita A. Del Mundo, OIC-Chief, Administrative Division of RR No. 7 Quezon City of the BIR,[33] and the Certification from the Pasig City Central Post Office.[34]

While taking all these documentary proof of mailing, nonetheless, the Court still finds that respondent failed to prove that the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated January 4, 2010,[35] were indeed received by petitioner.

In the case of *People of the Philippines v. Joseph Typingco,*[36] the Court sitting *En Banc* ruled in this wise:

> "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.
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> 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

[32] *Exhibit "9."*
[33] *Exhibits "10" and "11."*
[34] *Exhibit "12."*
[35] *Exhibit "14"*
[36] CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.

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.

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

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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.**
>
> 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. x x x
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> 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.
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> 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.'" (*Boldfacing supplied.*)

From the foregoing, in addition to the presentation of the "registry receipt and affidavit of the person mailing as proof of service," or the "registry return card signed by petitioner or its authorized representative," and in the absence of said documents, a "certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts,"[37] jurisprudence mandates that "for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee."

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[37] *See* Note 31.

It is also pertinent to note that even registry return receipts contain the proviso 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.[38]

And in the said latter requisite that respondent failed to convince this Court.

A perusal of the Certification dated February 20, 2013,[39] issued by the Pasig City Central Post Office, shows that the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated January 4, 2010,[40] were received by a certain "S/G Macavinta Jr." on January 12, 2010; however, respondent failed to prove that the mentioned receiving officer is authorized by petitioner to receive the questioned Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices.

Clearly, respondent failed to prove that the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated January 4, 2010, had been actually served and received by petitioner or its duly authorized agent.

To further cite the same case of *People of the Philippines v. Joseph Typingco*,[41] the Court finds the following instructive:

> "[S]uffice 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.**
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> 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,

[38] *See* Note 36.
[39] *Exhibit "12."*
[40] *Exhibit "14."*
[41] *See* Note 36.

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,* 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 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. 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, due process requires that it must be served on and received by the taxpayer.

> 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:
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> > **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 '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.' **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.'**
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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. 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 and therefore it was incumbent for respondent to show that the assessment was based on hard actual facts and not upon presumptions.**" (*Emphasis supplied.*)

Thus, in the absence of a valid service of the questioned Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated January 4, 2010, addressed to petitioner, and indeed received by the same or its duly authorized agent, the subject deficiency assessments cannot be considered as final, executory and demandable.

In addition, the Court finds that respondent's right to assess petitioner for deficiency income tax, VAT and EWT for taxable year 2006 has already prescribed, in line with three (3)-year period allowed under Section 203[42] of the 1997 NIRC. As pointed out by petitioner, respondent only had until April 15, 2010 to assess the alleged income tax deficiency.[43] For the alleged VAT deficiency, respondent only had until January 25, 2010 to assess, based on the Quarterly VAT returns.[44] Lastly, for the EWT, the three (3) years based on the last monthly return ended on January 10, 2010.[45] Respondent can no longer validly issue an assessment in the present case.

WHEREFORE, the Petition for Review dated May 11, 2012 is hereby **GRANTED**. The Formal Assessment Notice, with attached Details of Discrepancies and Assessment Notices, dated January 4, 2010; the Final Notice Before Seizure dated March 12, 2012; and the Warrant of Distraint and/or Levy dated April 12, 2012, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[42] 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.... (Emphasis supplied.)
[43] *Id.*, pp. 598.
[44] *Id.*
[45] *Id.*, pp. 599.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice