REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CORDERO INC., AGENCIA DE EMPENOS,
Petitioner,

C.T.A. CASE NO. 7150

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 0 3 2006

x- x

RESOLUTION

For resolution are:

a) respondent's **"Motion to Dismiss"** filed on July 22, 2005 anchored on the ground that petitioner failed to file its administrative protest within thirty (30) days from receipt of the documentary stamp tax (DST) assessment of P869,058.39 for taxable year 1999 (Final Assessment Notice or "FAN"); thus, the FAN had become final, pursuant to Section 228 of the National Internal Revenue Code (NIRC), and this Court has no jurisdiction to take cognizance of the present petition; and

b) petitioner's **"Comment/Opposition To: Motion to Dismiss"** filed on August 18, 2005.

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In its "Comment/Opposition To: Motion to Dismiss", petitioner maintains that it could not file its administrative protest because it did not receive the FAN from respondent. Petitioner further alleges that it only received the Warrant of Distraint and/or Levy dated January 17, 2005 on January 25, 2005 and treated the same as a final decision of the respondent appealable to this Court.

In resolving the present motion, this Court must initially determine whether or not petitioner received the FAN.

In *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue (G.R. No. 157064. August 7, 2006),* the Supreme Court ruled:

> "xxx [A]n assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.
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> xxx xxx
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> xxx [W]hen a mailed 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 the 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, there is still merely a disputable presumption subject to controversion, and a direct denial thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."

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Pursuant to the above settled rule, petitioner's denial that it received the FAN shifts the burden of proving otherwise upon respondent. To overcome such burden, respondent presented in evidence the following:

1) Exhibit "1" – Record of Dispatch and Delivery of Registered Mail by Letter Carriers dated January 14, 2003 of Postman Lecerio Farillon;
2) Exhibit "2" – Certification dated June 23, 2005 by Ms. Fe P. Gaoiran, Head, Records Unit of Central Post Office, Manila; and
3) Exhibit "3" –Transmittal slip of Assessment Notice and Demand Letter to Cordero Inc., Agencia de Empenos by Assessment Division, BIR, Revenue Region No. 6, Manila

After a careful examination of the documentary evidence presented, the Court finds that respondent has sufficiently proved that petitioner received the FAN. A perusal of the Certification issued by the Head, Records Unit of the Central Post Office, Manila *(Exhibit "2")* shows that Registered Mail No. 34946 which contains the FAN *(Exhibit "3")* was duly received by the petitioner through a certain Mrs. Bianca Flor, on January 14, 2003. Pursuant to Section 10, Rule 13 of the 1997 Rules of Civil Procedure, as amended, service by registered mail is complete upon actual receipt by the addressee. Considering that petitioner did not dispute the evidence presented by respondent, the presumption of regularity in the performance of official duty applies in the instant case.

For petitioner's failure to file an administrative protest within thirty (30) days from receipt of the FAN on January 14, 2003, the FAN had become final, executory and demandable, pursuant to Section 228 of the NIRC. As such, as a final assessment, it is no longer appealable to this Court under Section 7 (a)(1) of R.A. No. 9282.

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For all the foregoing, We have no alternative but to grant the Motion to Dismiss.

WHEREFORE, premises considered, the case in caption is hereby **DISMISSED.**

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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