REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MAERSK LOGISTICS FILIPINAS, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE, REVENUE OFFICERS SUSANA B. GARCIA and JOCELYN L. YANSUAN, REVENUE DISTRICT OFFICER DAVID J. ALARCON and REGIONAL DIRECTOR RUPERTO P. SOMERA,
Respondents.

C.T.A. CASE NO. 7099

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

MAY 06 2009 ; 10:53 am

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DECISION

BAUTISTA, *J.*:

Before the Court is a Petition for Review filed by Maersk Logistics Filipinas, Inc. on November 17, 2004, praying that judgment be rendered: (1) declaring the deficiency income tax, value-added tax, expanded withholding tax, and fringe benefit tax assessments covering taxable year 2000 in the aggregate amount of P85,695,474.97 including increments, as void and/or devoid of factual or legal basis; (2) canceling the said deficiency tax assessments; (3) declaring respondents Susana Garcia, Jocelyn Yamsuan, David Alarcon, and Ruperto Somera guilty of willful oppression towards petitioner and/or gross negligence in issuing baseless assessments thereby forcing petitioner to incur expenses in bringing this suit before this

Court; and (4) ordering respondents Susana Garcia, Jocelyn Yamsuan, David Alarcon, and Ruperto Somera to jointly and severally reimburse petitioner for the legal costs and expenses of this suit.

Maersk Logistics Filipinas, Inc. (Petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, engaged in the business of consolidation of cargoes.[1] Its principal office address is at the 51/F PBCom Tower, 6795 Ayala Avenue, Makati City, Philippines.[2]

Respondent Commissioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to exercise the functions of said office, including, among others, 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 the National Internal Revenue Code (NIRC).[3]

Respondents Ruperto Somera, David J. Alarcon, Jocelyn L. Yamsuan, and Susana B. Garcia are respectively, the duly appointed Regional Director of Revenue Region No. 6 – Manila, the Revenue District Officer of Revenue District No. 34 – Paco/Pandacan/Sta. Ana, and the revenue group supervisor of the BIR. They are all sued in their official capacities, due to their alleged willful oppression of petitioner and/or gross negligence in issuing baseless assessments against petitioner.[4]

Petitioner filed its Quarterly Fringe Benefit Tax (FBT) and Value-added Tax (VAT) Returns[5], on the following dates:

Quarter	Date Filed and Paid
First	April 25, 2000
Second	July 24, 2000
Third	October 25, 2000
Fourth	January 25, 2001

[1] Par. 4, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 174
[2] Par. 1, Summary of Admitted Facts, JSFI, Docket, p. 174
[3] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 174
[4] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 174
[5] Par. 16, Summary of Admitted Facts, JSFI, Docket, pp. 181-182

As for its Monthly Remittance Returns of Income Taxes Withheld, petitioner filed and paid the same on the following dates:

Month	Date Filed and Paid
January	February 10, 2000
February	March 10, 2000
March	April 25, 2000
April	May 10, 2000
May	June 9, 2000
June	July 24, 2000
July	August 10, 2000
August	September 8, 2000
September	October 10, 2000
October	November 10, 2000
November	December 8, 2000
December	January 25, 2001

A Letter of Authority No. 0019005 and First Request for Presentation of Records, both dated September 14, 2001, were issued to petitioner. Subsequently, petitioner received respondents' Second Request for Presentation of Records dated March 1, 2002, a third letter dated October 16, 2002, with a warning for the issuance of *subpoena duces tecum*, and a letter dated April 18, 2003 which stated respondents' initial findings of deficiency taxes. In response to these letters and requests, petitioner wrote several letters to disprove the BIR's findings of deficiency taxes.

On August 25, 2003, respondents issued Preliminary Assessment Notice against petitioner for deficiency income, value-added, fringe benefit, and expanded withholding taxes covering taxable year 2000; which petitioner received on September 22, 2003.[6]

Subsequently, on March 23, 2004, petitioner received the corresponding Preliminary Collection Letter dated March 15, 2004, showing the following deficiency taxes:[7]

Kind of Tax	Basic	Penalties	Total
Income Tax	43,085,814.63	22,261,825.90	65,347,640.53
Value-Added Tax	12,896,283.90	7,253,992.60	20,150,276.50
Expanded Withholding Tax	112,955.35	79,316.95	192,272.30
Fringe Benefit Tax	2,746.24	2,539.40	5,285.64
TOTAL	**56,097,800.12**	**29,597,674.84**	**85,695,474.97**

[6] Pars. 3 and 5, Summary of Stipulated Facts, JSFI, Docket, p. 183
[7] Pars. 4 and 6, Summary of Admitted Facts, JSFI, Docket, pp. 175-176

In a letter dated March 24, 2004, petitioner replied to the aforementioned Preliminary Collection Letter and requested that it be furnished copies of the subject assessment notices mentioned in the collection letter.[8] On the same date, petitioner obtained from respondents copies of the Demand Letters all numbered 34-2000 and of the assessment notices, all dated November 13, 2003, for deficiency income, value-added, expanded withholding, and fringe benefit taxes covering taxable year 2000.[9]

On April 21, 2004, petitioner protested the aforementioned assessments.[10] On August 30, 2004, petitioner reiterated its request for reinvestigation through a letter dated August 24, 2004.[11]

This Petition for Review was filed on November 17, 2004.

On January 3, 2005, respondent Commissioner of Internal Revenue filed his Answer, raising the following Special and Affirmative Defenses:

> "5. The Assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity (Behn Meyer and Co., vs. Collector of Internal Revenue, 27 Phil. 647). Thus, similarly held, tax assessments by the tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 647), and assessment duly made by a Bureau of Internal Revenue examiner and approved by his supervisor will not be disturbed (Gutierrez vs., Villegas, 8 SCRA 527).
>
> 6. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that the taxpayer is right (Tan Guam vs. Court of Tax Appeals, et. al., 19 SCRA 902), otherwise, the presumption in favor of the correctness of the assessments stand (Inter-provincial Bus Co., vs. Collection of Internal Revenue, 8 Phils. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phils. 967).
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> 7. The assessments have become final, executory and demandable on the following grounds:

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[8] Annex "D", Petition for Review, Docket, p. 33
[9] Par. 7, Summary of Admitted Facts, JSFI, Docket, p. 176
[10] Annex "I", Petition for Review, Docket, pp. 47-57
[11] Pars. 10-11, Summary of Admitted Facts, JSFI, Docket, p. 178

a. *Failure to File Protest on Time.* – The assessments were issued and sent on November 13, 2003 per Registry Receipt No. 850498 dated November 13, 2003 and the petitioner received the same on November 25, 2003 through authorized representative, a certain Richard Pareno per Registry Return Receipt dated November 25, 2003 attached to the BIR Transmittal Sheet in the BIR records. Petitioner however only protested the same on March 26, 2004 (Annex 'D-1', petition) or only after more than three (3) months from the receipt thereof, making the assessments final.

   Petitioner alleged that it did not receive the assessments on November 13, 2003 by registered mail in view of the transfer from the old address at 900 Romualdez Street, Paco, Manila to 51/F PBCom Tower, 6795 Ayala Avenue, Makati City, the new address, duly notifying the BIR, that assessments were received personally from RDO 34-Collection Unit only on March 24, 2004 and that protest was made subsequently on March 26, 2004. This is a mere alibi.

   The change of address and filing of notice thereof with the BIR were not mentioned in the protests dated March 26, 2004 and April 21, 2004. Moreover, even if alleged in the petition for review, petitioner failed to attach proof thereof. Petitioner should have attached as proof thereof, among others, the BIR Form 1903 (Application for Registration) duly filed with the BIR RDO-Makati which has jurisdiction over its new place of business, the BIR Form 1905 (Update of Registration Information – change of registered address) duly filed with RDO 34-Manila having jurisdiction over the old address, in accordance with Revenue Memorandum Order (RMO) 10-02 dated April 30, 2002, as amended by RMO 40-2004 dated July 20, 2004 and Operations Manual Registration System. Lastly, though alleging non-receipt on November 25, 2003 of the final assessment notices bearing the old address due to change of address, petitioner, however, admitted in the petition for review (par. 10) that it still received on March 23, 2004 the preliminary collection letter (Annex 'D', petition) which contained the old and not new address.

b. *Failure to submit records in support of protest.* – On the other hand, the assessments were issued and received within the three (3) year prescriptive period to assess, reckoned from April 10, 2001, date of filing of income tax return up to April 15, 2004, last date of the prescriptive period; the assessments being received on March 24, 2004 by petitioner (Par. 12, petition for review) or about 20 days before the prescriptive date on April 15, 2004. Petitioner duly protested the assessments on March 24, 2004 but failed to submit accounting records in support thereof within sixty (60) days from the filing of the protest under Section 228 of the 1997 Tax Code or on May 26, 2004. Worse, submission of records in support of the protest or justification in not submitting the same were not even alleged in the protest and in the petition for review.

Failing to submit records within the reglementary period, the assessments become final.

Section 228 of the Tax Code provides that:

> *'Such assessment may be <u>protested administratively by filing a request for reconsideration or reinvestigation</u> within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. <u>Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.</u>*
>
> *If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the One Hundred Eighty (180) day period, otherwise, the decision shall become final, executory and demandable.' (Emphasis supplied.)*

In support of the protest, petitioner should have submitted contracts, official receipts, and journal entries proving that gross sales per VAT returns are sales in 2000 and prior years and that the gross receipts per income tax return are accrued income for 2000 and are net of cost of sales, to belie under-declaration of income; that expenses and income compensation per Alpha lists were already deducted from gross income; that lease improvements were written-off; that income payments are not subject to EWT; and that fringe benefits were all imposed with Fringe Benefits Tax, among others.

c. Prescription of the Right to Assess for VAT, EWT, and Fringe Benefits Tax is not a defense. – Petitioner cannot allege for the first time, in the petition for review prescription of the value-added tax, expanded withholding tax, and fringe benefits tax being not alleged in the protests dated March 26, 2004 and April 21, 2004 (Holiday Inns (Phils) Inc. vs CIR, CA-G.R. SP No. 78828 dated September 9, 2004, Resolution dated January 29, 2004, Singer Finance Corporation vs CIR and Belle Corporation vs CIR, CTA Case No. 5930, April 4, 2002). Moreover, the right to assess the said taxes cannot prescribe as the period to assess is not three (3) years under Section 203 but ten (10) years under Section 222 for filing false VAT, EWT and Fringe Benefits (income tax) returns for failure to impose VAT on undeclared income, EWT on certain income payments and Fringe Benefits Tax on fringe benefits, resulting to deficiency assessments.

Having not prescribed, the assessments become final, demandable and executory.

8. The Court of Tax Appeals has no jurisdiction over the instant case on the ground that the assessments have become final, demandable and executory in view of the following considerations, thus:

a) filing by petitioner of the protest out of time on March 26, 2004 or only after more than three (3) months from the receipt of the assessments on November 25, 2003 per registry return card; certified true copy of the BIR Transmittal is attached as Annex 'A'; Registry Receipt, Annex 'B' and Registry Return Receipt, Annex 'C'.
b) failure of petitioner to submit accounting records in support of the protests dated March 26, 2004 and April 21, 2004 within sixty (60) days from the filing of the protest under Section 228 of the 1997 Tax Code; the last date thereof being on May 26, 2004, reckoned from March 26, 2004, the date of the filing of the protest.

In the Resolution dated May 7, 2004 in the case of Singer Finance corporation vs. CIR, CTA Case No. 6743 citing the case of CIR vs. Leonardo S. Villa and the CA, 22 SCRA 3, the Court of Tax Appeals ruled in this wise:

'Presently, a taxpayer is required under Section 228 of the NIRC of 1997 to file an administrative protest with the Commissioner of Internal Revenue before any recourse to this court can be had.

Section 228 of the NIRC of 1997 is also very clear that should the taxpayer fail to file any administrative protest against an assessment, it becomes final. The administrative protest is an integral part of the remedies given to the taxpayer in challenging the legality or validity of an assessment. It is absolutely necessary for the taxpayer to file an administrative protest in order for this court to acquire jurisdiction. Otherwise, the assessment would not be considered as a disputed assessment which the Commissioner of Internal Revenue is obliged to decide or in default thereof, his inaction thereon would give rise to petitioner's right to invoke the jurisdiction of this court through a petition for review.

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Petitioner, however, did not file any protest within the thirty day period. As a result of such failure, there is no decision of the Commissioner of Internal Revenue that can be appealed to this Court. A decision from the Commissioner of Internal Revenue is necessary before this Court can acquire jurisdiction in accordance with Section 7 of Republic Act No. 1125, which provides:

> *'Section 7. Jurisdiction. – The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue.*
> *(2) Decisions of the Commissioner of Customs*
> *(3) Decisions of provincial or city Board of Assessment Appeals."*

On January 20, 2005, petitioner filed its Reply submitting the following grounds:

1. respondent cannot rely on the presumption of correctness of tax assessments;
2. the assessments are not final, executory, and demandable due to respondents' failure to observe the requirement of due process;
3. the Court of Tax Appeals has jurisdiction over the instant case; and
4. the right of respondent to assess VAT, EWT, and FBT has prescribed.

In a separate Answer filed on February 16, 2005, respondents Susana B. Garcia, Jocelyn L. Yamsuan, David J. Alarcon, and Ruperto P. Somera raised the same Special and Affirmative Defenses as that brought up by respondent Commissioner of Internal Revenue, except for the following additional arguments:

1. That respondents enjoy the presumption that they have performed their official duties regularly and cannot be held liable to petitioner if injured as a consequence of their official acts within the scope of their official authorities and in line with their official duties.

2. That respondents Susan B. Garcia as examiner and Jocelyn L. Yamsuan as supervisor afforded petitioner due process in accordance with Section 228 of the Tax Code and its implementing rules, when they investigated petitioner for deficiency internal revenue taxes. The Letter of Authority dated September 14, 2001 was duly served, together with the Requests for Presentation of Records subsequently issued. An invitation for an informal conference was likewise served to and received by petitioner. The Pre-Assessment Notices as well as the Final Assessment Notices were duly issued to and received by petitioner.

3. The report of the investigation was approved by respondent David J. Alarcon based on the findings and recommendation of the examiner and supervisor made in the regular course of their official duties. The Pre-Assessment Notice issued by respondent Ruperto P. Somera was likewise based on the findings and recommendations of the Assessment Division which reviewed the report of investigation.

Respondents Susan B. Garcia and Jocelyn L. Yamsuan adopted and repleaded the allegations in the Special and Affirmative Defenses of co-respondents David J. Alarcon in their Answer filed on February 24, 2005. In addition thereto, both Garcia and Yamsuan alleged that:

1. they made their initial assessments and forwarded their findings and the entire docket to the Assessment Division of the BIR;

2. their duties and responsibilities stopped on the date they submitted their report to the Revenue District Officer;

3. per Revenue Administrative Order No. 10-2000, it is the duty of the Assessment Division to issue assessment notices, review and act on all letters of protests, requests for reinvestigation and similar communications; and

4. they cannot be held liable for legal costs and expenses allegedly incurred by petitioner, since they did they act in bad faith, with gross negligence and willful oppression in the conduct of their tax investigation of petitioner's 2000 internal revenue taxes.

Meanwhile, on March 6, 2008, before this case could be submitted for decision, petitioner availed of the provisions of Republic Act (R.A.) No. 9480, otherwise known as the "Tax Amnesty Act of 2007". In view of its availment, petitioner field a "Manifestation and Motion" on May 9, 2008 seeking the withdrawal of its Petition for Review and further praying that the subject assessments be cancelled. In a Resolution[12] dated June 5, 2008, this Court partially granted petitioner's motion and considered the instant Petition as closed and terminated but only as regards the deficiency taxes covered by the provisions of R.A. No. 9480. Petitioner was then ordered to file its Amended Petition for Review to cover the remaining issues on deficiency withholding and fringe benefit taxes for taxable year 2000.

On June 27, 2008, petitioner filed its Amended Petition for Review; this time covering only the remaining deficiency expanded withholding tax and fringe benefit tax assessments in the aggregate amount of P197,557.94.

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[12] Docket, pp. 673-675

After due hearing, this case was submitted for decision on October 14, 2008, taking into consideration petitioner's Memorandum filed on September 19, 2008 and respondent's Memorandum filed on October 6, 2008.[13]

The parties mutually agreed on the following issues[14] for the resolution of this Court:

"1. Whether Petitioner was denied due process in the issuance of the Pre-Assessment Notice, the Final Assessments and the Preliminary Collection Letter in contravention of Section 228 of the National Internal Revenue Code of 1997 ('Tax Code') and other applicable laws;

2. Whether the alleged irregularities and errors committed by respondent in issuing the assessments rendered the assessments void or a nullity;

3. Whether the deficiency VAT, expanded and fringe benefit tax assessments issued against the petitioner for the year 2000 have prescribed;

4. Whether there are legal or factual bases to support the deficiency tax assessments issued against the petitioner;

   4.1 Whether or not petitioner understated its sales for income tax and VAT purposes;
   4.2 Whether or not petitioner can substantiate the loss on sale of asset resulting from the write-off of leasehold improvements;
   4.3 Whether or not reimbursements made by petitioner to Maersk Filipinas, Inc., for its share in the office rentals is subject to expanded withholding tax.
   4.4 Whether or not petitioner's payments to general professional partnerships are subject to expanded withholding tax.
   4.5 Whether or not petitioner can be held liable for fringe benefits tax when the assessments did not state the factual and legal basis for the deficiency fringe benefits tax assessments.

5. Whether the respondents Susana B. Garcia, Jocelyn L. Yamsuan, David J. Alarcon, and/or Ruperto P. Somera acted in bad faith, with gross negligence and with willful oppression towards the Petitioner, hence should be held liable for damages, attorneys' fees, and costs of litigation

6. Whether or not petitioner filed the protest on the Final Assessment Notices No. 34-2000 dated November 13, 2003 on time?

7. Whether or not petitioner failed to submit records in support of the protest within sixty (60) days from the filing thereof?

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[13] Docket, p. 826
[14] Statement of the Issues, JSFI, Docket, pp. 187-189

8. Whether or not the Final Assessment Notices No. 34-2000 dated November 13, 2003 for the deficiency 2000 income tax, value-added tax, expanded withholding tax and fringe benefit tax liabilities are valid?

9. Whether or not petitioner could prove that the contract services, rentals (operations costs), office rental, professional fees, customs inspection contracted and incurred are not subject to expanded withholding taxes?

10. Whether or not (petitioner) could prove it has made subject in full the fringe benefits to the fringe benefit tax?

11. Whether or not respondents performed their respective official duties and functions within the bounds of their authority in the regular course of official business?

12. Whether or not the Court of Tax Appeals has jurisdiction on the claim for damages on account of the alleged bad faith, gross negligence and willful oppression in the investigation and issuance of the assessment notices by respondents?"

In view of petitioner's availment of the benefits of Republic Act No. 9480, the remaining issues for this Court's consideration would be the issue on due process and the validity of the deficiency expanded withholding and fringe benefits taxes for taxable year 2000.

Petitioner basically argues that it did not receive any copies of the Final Assessment Notices allegedly issued on November 13, 2003; however, it received the Preliminary Assessment Notice dated August 25, 2003. Petitioner likewise admitted having received a copy of the Preliminary Collection Letter dated March 15, 2004. Petitioner submits that it was denied due process when respondent failed to comply with Section 228 of the NIRC of 1997 and its implementing rules.

Respondents, on the other hand, aver that the Final Assessment Notices have become final and executory in view of petitioner's failure to file its protest within thirty (30) days from its receipt of the assessment notices. Respondents contend that the Final Assessment Notices were duly issued and sent to petitioner, which the latter received as evidenced by the Registry Return Receipt and Card.

As regards the issue on due process, Section 228 of the NIRC of 1997 laid the following rules on assessment:

> "**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: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
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> 1. When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> 2. When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> 3. When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year, or
> 4. When the excise tax due on excisable articles has not been paid; or
> 5. When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) — day period; otherwise, the decision shall become final, executory and demandable."

The above-quoted section requires that the Commissioner of Internal Revenue or his duly authorized representative must send notice/s of assessment to the taxpayer in order to give the latter an opportunity to file a protest. And no less than 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.[15] In other words, an assessment is deemed made only when the same is actually received by the taxpayer. If it appears that the person liable for the payment did not receive the assessment, the assessment could not become final and executory.

In the present case, petitioner denied receiving the Final Assessment Notice. It is therefore incumbent upon respondents to prove by contrary evidence that petitioner actually received the subject assessment notices.

A close scrutiny of the records of the case would reveal that the reason presented by petitioner for its alleged failure to receive the Final Assessment Notices dated November 13, 2003 was due to its transfer of office from 900 Romualdez St., Paco, Manila to 51/F PBCom Tower, 6795 Ayala avenue, Makati City.[16] However, the records do not show that petitioner informed respondent that it had changed its office address to Makati City from Paco, Manila, in accordance with the requirement of Revenue Regulations (R.R.) No. 12-85. Section 11 of R.R. No. 12-85 requires that when a taxpayer transfers to another location, a **written notice** of said change of address shall be filed in the manner prescribed therein, thus:

> "In case of change of address, the taxpayer **must give written notice** thereof to the Revenue District Officer or district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, **and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.**" (*Emphasis supplied*)

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[15] Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue, G.R. No. 155541, January 27, 2004

[16] Annex "D", Petition for Review, Docket, p. 33; Exhibit "39"

Revenue Regulations No. 12-85 clearly requires that the written notice must be sent to the Revenue District Officer who has jurisdiction over his former place of business, furnishing a copy to each of the following BIR offices:

1. Revenue District Officer having jurisdiction over his new legal residence or place of business;
2. Revenue Computer Center; and
3. Receivable Accounts Division, BIR, National Office, Quezon City.

And should the taxpayer fail to comply with the foregoing prerequisites, any communication that might have been sent to his former legal residence or business address shall be considered **valid and binding** for purposes of the period within which to reply.

Petitioner's argument runs counter to its admission that it received the Preliminary Collection Letter, also sent to its old address in Paco, Manila, on March 23, 2004. Logically, if petitioner received the collection letter addressed to their old office when they were allegedly already in their new address in Makati City, it should have received the assessment notices sent to its old office on an earlier date. Respondents' arguments coupled with the documentary evidence presented like the Registry Notice Receipt No. 850498[17], the Registry Return Receipt[18], the judicial affidavits[19], and the certificates from the Philippine Postal Office[20] would belie petitioner's claim that it did not receive copies of the Final Assessment Notices. The foregoing pieces of evidence weigh heavily against petitioner's contention.

In view of petitioner's failure to comply with the requirement of a written notice of its change of address, any communication sent by respondent addressed to petitioner's former place of business is valid and binding for purposes of the period within which to reply. In this particular case, the "period within which to reply" refers to the filing of the protest against the assessment required by Section 228 of the NIRC of 1997, wherein the taxpayer is given a thirty (30)-day period within which to protest an assessment, to wit:

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[17] Exhibit "37"
[18] Exhibit "37"
[19] Exhibits "43", "46", and "47"
[20] Exhibits "48", "49", and "51"

> "**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; *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the 180-day period; otherwise, the decision shall become final, executory and demandable."

The Final Assessment Notice was sent by registered mail on November 13, 2003. Petitioner's protest letter was filed only on April 21, 2004. Verily, the 30-day period provided by law within which petitioner could file its protest letter have indeed lapsed.

In relation thereto, Section 223 of the NIRC of 1997 provides in part:

> "**SEC. 223. Suspension of Running of Statute of Limitations.** — The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided,* That, **if the taxpayer informs the Commissioner of any change in address,** the running of the Statute of Limitations will not be suspended. xxx." (*Emphasis supplied*)

From the foregoing, the Final Assessment Notices sent by registered mail to petitioner's former place of business have become final and unappealable for failure to protest the same within the period provided by law. As provided in Section 228, the failure of a taxpayer to file a timely protest against the assessment renders the assessment final, executory, and unappealable. Once the assessment attains finality, the taxpayer is already precluded from disputing the correctness of the assessment. Hence, petitioner can no longer seek judicial relief from this Court because the assessment is already final, executory, and unappealable. Consequently, it is now beyond judicial review.

Section 7(1) of R.A. No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals", as amended by R.A. No. 9282, limits the jurisdiction of this Court to decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. *Ergo*, this Court has no jurisdiction to entertain and determine the correctness of an assessment that had attained finality. Corollary to this, the Supreme Court had ruled that this Court is a court of special jurisdiction. As such, it can take cognizance only of such matters that are clearly within its jurisdiction. Accordingly,.the merits of the said assessment notices can no longer be the subject of a judicial inquiry.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division