REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FEATI UNIVERSITY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8659

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO,
RINGPIS-LIBAN, *JJ.*

Promulgated:
DEC 05 2017
1:25 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

Before this Court is the Petition for Review filed by FEATI University, Inc. which prays for the cancellation of the assessment issued against it for alleged deficiency value-added tax (VAT), deficiency expanded withholding tax (EWT), and deficiency documentary stamp tax (DST) for fiscal year 2007.

The Facts

Petitioner FEATI University, Inc. is an educational institution duly organized and existing in accordance with the laws of the Republic of the Philippines, with address at AIDM Main Building, Helios cor. Palanca Sts. Quiapo, Manila, Philippines.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties

[1] Par. 1, Joint Stipulation of Facts (JSF), docket, vol. IV, p. 2012.

imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 20, 2007, the BIR issued Letter of Authority (LOA) No. 00013705 dated November 20, 2007, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from June 1, 2006 to May 31, 2007.[2]

On June 27, 2010, petitioner received from the BIR-Revenue District Office (RDO) No. 32 a Notice of Informal Conference dated May 31, 2010, relative to its proposed findings on petitioner's alleged deficiency taxes for fiscal year 2007. The notice states that after the audit/review conducted by the examiners, petitioner was found to be liable for deficiency VAT, EWT, and DST in the total amount of ₱19,375,507.33.[3]

On June 10, 2011, petitioner received a Preliminary Assessment Notice (PAN) dated June 7, 2011 for deficiency VAT, EWT and DST amounting to ₱21,305,147.00.[4]

Subsequently, on December 14, 2011, petitioner received a Final Notice Before Seizure (FNBS) dated December 8, 2011, demanding payment of deficiency VAT, EWT, and DST for fiscal year 2007 in the total amount of ₱21,969,502.22.[5]

Petitioner filed on December 23, 2011 a letter-reply dated December 22, 2011 to the FNBS[6], to which the BIR-RDO No. 32 replied, noting that the Final Assessment Notice (FAN) together with the Formal Letter of Demand (FLD) was issued by the Assessment Division on June 29, 2011 through registered mail and was received by a certain Mr. Rommel Abella, a property custodian.[7]

On March 9, 2012, petitioner requested the re-evaluation of the deficiency tax assessment in light of the alleged improper service of the FAN.[8]

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[2] Par. 4, JSF, docket, vol. IV, p. 2013.
[3] Par. 5, JSF, docket, vol. IV, p. 2013.
[4] Par. 6, JSF, docket, vol. IV, p. 2013.
[5] Par. 7, JSF, docket, vol. IV, p. 2013.
[6] Par. 8, JSF, docket, vol. IV, p. 2014.
[7] Par. 9, JSF, docket, vol. IV, p. 2014.
[8] Par. 10, JSF, docket, vol. IV, p. 2014.

Respondent sent a letter dated October 8, 2012 and received by petitioner on October 12, 2012, responding to the request for re-evaluation and noting that the assessment has been forwarded to the Regional Director for proper evaluation and approval of request. Also, it reiterated the demand for payment of the alleged delinquent taxes.[9]

On October 22, 2012, petitioner requested the reconsideration of the October 8, 2012 letter of BIR-RDO No. 32. Petitioner likewise submitted another letter to the BIR-RDO No. 32 on January 9, 2013, inviting its attention to petitioner's request for the revisiting of the legal and factual bases of the assessments against petitioner.[10]

However, on May 3, 2013, respondent, through Revenue Officer (RO) Wilfredo A. Alday, served a Warrant of Distraint and/or Levy dated April 30, 2013, seeking to enforce the collection of petitioner's alleged deficiency VAT, EWT, and DST.[11]

On May 27, 2013, petitioner filed a letter with the BIR-Revenue Region No. 6, where it objected to the issuance of the Warrant of Distraint and/or Levy and informed the latter that it is considering the same as respondent's final decision on its protest letter.[12]

Hence, petitioner filed the instant Petition for Review (With Urgent Motion to Quash Warrant of Distraint and/or Levy and/or to Suspend Collection of Taxes) with this Court on May 31, 2013.[13]

Respondent filed his Answer[14] to the Petition for Review on July 17, 2013, interposing the following special and affirmative defenses:

> "10.1. The instant petition is primarily anchored on the petitioner's claim that the tax deficiency assessments subject of this case are null and void considering that the requirements of due process for the issuance of deficiency tax assessment under Section 228 of the National Internal Revenue Code (NIRC), as amended, and Section 3 of RR 12-99 has not been complied with;

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[9] Par. 11, JSF, docket, vol. IV, p. 2014.
[10] Par. 12, JSF, docket, vol. IV, p. 2014.
[11] Par. 13, JSF, docket, vol. IV, p. 2014.
[12] Par. 14, JSF, docket, vol. IV, p. 2014.
[13] Docket, vol. I, pp. 8-40.
[14] Docket, vol. I, pp. 256-264.

10.2. In support thereof, petitioner averred that it did not receive the FAN which is mandatory due process requirement. Other than this bare allegation, however, petitioner has nothing to show to prove that it did not receive the said notice;

10.3. On the contrary, BIR records clearly show that said FANs dated June 29, 2011 were duly mailed through registered mail to the petitioner under Registry Receipt No. 922443 of the Central Post Office Manila on June 29, 2011.

10.4. Petitioner likewise claimed that deficiency Value-Added Tax (VAT), Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) have no legal and/or factual bases;

10.5. Section 228 of the NIRC, as amended, and RR No. 12-99 merely require that the taxpayer must be informed in writing of the law and the facts on which the assessment was made. Thus, there was compliance with the mandate of the law when the FAN is accompanied with complete details, such as the computations, schedules and applicable laws, which are the factual and legal bases covering the aforementioned discrepancies established during the investigation. [*Irene C. Salud vs. CIR, CTA EB Case No. 412 (CTA Case No. 6954), 30 April 2009*]

10.6. Moreover, it should be pointed out that petitioner has submitted with the BIR several correspondence questioning the basis of the deficiency tax assessment; thus, the same strengthen the fact that petitioner has been properly informed of the said factual and legal bases of the assessment;

10.7. Finally, contrary to the claim of the petitioner, the subject assessment is not based on mere assumptions but based on the audit investigations conducted pursuant to an issue based Letter of Authority LOA 2007 00013705 dated November 20, 2007;

10.8. The subject assessment is valid and correct and the petitioner has the burden of proof to impugn its validity (*Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647*). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise; (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671*); and assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villgas, 8 SCRA 547*);

10.9. 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 also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil. 967 [1960]*);

10.10. All presumption are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove to the contrary (*Commissioner of Internal Revenue vs. Antonio Tuason, Inc., 173 SCRA 397; Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671*);

10.11. The assessments were issued in the regular course and within the reglementary period to assess provided by law. BIR records show that petitioner executed a Waiver of the Defense of Prescription on April 28, 2010, waiving the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of the covered taxable year not later than June 30, 2011. Hence, subject assessments have not yet prescribed."

The Motion to Quash Warrant of Distraint and/or Levy and/or to Suspend Collection of Taxes was set for hearing[15] and the parties presented their respective evidence pertaining to the said motion. Thereafter, the Court granted the motion on January 21, 2015 and ordered, among others, the posting of a surety bond equivalent to one and one-half of ₱21,969,502.22, the disputed assessment, or in the amount of ₱32,954,253.33.[16]

Upon filing of three (3) separate motions for extension of time, the Court gave petitioner until April 21, 2015 within which to post the required bond.[17]

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[15] Minutes of the hearing held on July 18, 2013, docket, vol. I, p. 306.
[16] Resolution dated January 21, 2015, docket, vol. II, pp. 872-874.
[17] Resolution dated April 7, 2015, docket, vol. IV, pp. 1917-1918.

The Court initially set the case for Pre-Trial Conference on January 29, 2015[18], which was reset to May 5, 2015[19]. Respondent's Pre-Trial Brief was filed on January 23, 2015[20]; while petitioner filed by registered mail its Pre-Trial Brief on March 5, 2015[21] and received by the Court on March 11, 2015.

On April 21, 2015[22] and on April 30, 2015[23], petitioner filed its fourth and fifth motions for extension of time to file bond.

On May 8, 2015, petitioner filed a Motion for Recomputation of Surety Bond with Manifestation, requesting the reduction of the amount of surety bond to ₱18,162,649.97 or any other amount as the Court may deem reasonable in accordance with CTA *En Banc* Resolution No. 02-2015 and the submission of a surety bond in the reduced amount within ten (10) days from receipt of the order.

Subsequently, petitioner filed its Compliance on May 18, 2015[24], complying with the Order dated January 21, 2015, and attaching thereto the following:

1. Photocopy of the Surety Bond;
2. Original Copy of the Endorsement by MAAGAP dated May 11, 2015;
3. Photocopy of TCT No. 20399;
4. Photocopy of Certification of Accreditation and Authority (with photos of the authorized agents of the Bonding Company);
5. Photocopy of Certificate of Compliance of MAAGAP; and
6. Photocopy of Secretary's Certificate dated July 14, 2014.

Petitioner further acknowledges that the admission of the said revised surety bond is contingent upon the resolution of the Motion for Recomputation of Surety Bond filed by petitioner and that it undertakes to submit a revised surety bond in such amount as may be ordered or required by the Court.

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[18] Notice of Pre-Trial Conference dated November 5, 2014, docket, vol. II, p. 724.
[19] Minutes of the hearing held on March 10, 2015, docket, vol. III, p. 1453.
[20] Docket, vol. II, pp. 1010-1019.
[21] Docket, vol. III, pp. 1484-1513.
[22] Docket, vol. IV, pp. 1919-1926.
[23] Docket, vol. IV, pp. 1936-1947.
[24] Docket, vol. IV, pp. 1977-2011.

On May 29, 2015, the Court noted the Compliance and ordered respondent to file a comment on petitioner's motion for extension and motion for recomputation.[25]

The Court received the parties Joint Stipulation of Facts on May 29, 2015, which was filed via registered mail on May 20, 2015.[26]

A Pre-Trial Order was issued on June 17, 2015, terminating the pre-trial.[27]

Trial ensued, giving both parties the opportunity to present their respective evidence.

After presentation, marking, identification, and formal offer, the Court admitted Exhibits "P-8" to "P-53", inclusive of submarkings, as petitioner's evidence.[28]

As to respondent, the Court admitted Exhibits "R-5" to "R-44-a", inclusive of submarkings, as part of respondent's evidence.[29]

Subsequently, respondent's Memorandum [30] was submitted on November 21, 2015; while petitioner filed its Memorandum[31] via registered mail on December 5, 2016 and received by the Court on December 9, 2016. Hence, the Court declared the case submitted for decision on December 20, 2016.[32]

The Issues

The parties submitted the following issues for the Court's disposition:[33]

1. Whether or not the authority of the respondent to issue the VAT, EWT and DST Assessments have already prescribed;

[25] Resolution dated May 29, 2015, docket, vol. IV, p. 2030.
[26] Docket, vol. IV, pp. 2012-2027.
[27] Docket, vol. IV, pp. 2043-2054.
[28] Resolution dated March 23, 2016, docket, vol. VI, pp. 3043-3044.
[29] Resolution dated September 23, 2016, docket, vol. VI, pp. 3070-3071.
[30] Docket, vol. VI, pp. 3083-3096.
[31] Docket, vol. VI, pp. 3097-3170.
[32] Resolution dated December 20, 2016, docket, vol. VI, p. 3172.
[33] Issues, Pre-Trial Order, docket, vol. IV, pp. 2046-2047.

2. Whether or not the waiver dated April 28, 2011 was executed by petitioner in accordance with existing laws, regulations and jurisprudence;

3. Whether or not there is a legal or factual basis for the deficiency VAT, EWT and DST assessments rendered pursuant to LOA dated November 20, 2007;

4. Whether or not the deficiency tax assessment on VAT, EWT and DST in the amounts of ₱20,705,243.02, ₱926,860.56 and ₱337,398.64, inclusive of increments under Assessment Notices with Nos. 32-FY053107-VT-1688, 32-FY053107-WE-1589 and 32-FY053107-DS-1690, respectively, all dated June 29, 2011, issued by respondent against the petitioner for the fiscal year ending May 31, 2007 had become final, executory and demandable; and

5. Whether or not petitioner is liable for the assessed VAT, EWT and DST in the amounts of ₱20,705,243.02, ₱926,860.56 and ₱337,398.64, respectively, inclusive of increments for fiscal year ending May 31, 2007.

Discussion/Ruling

The Court shall determine first whether the FAN for fiscal year 2007 was properly served on petitioner and has already attained finality.

According to respondent, the FAN together with the FLD dated June 29, 2011 was mailed on the same day and was received by petitioner on July 1, 2011. Hence, petitioner had until July 31, 2011 within which to file its administrative protest. However, petitioner failed to file its protest within the reglementary period provided by law; thus, the FAN has become final, executory and demandable.

On the other hand, petitioner claims that it did not properly receive the assessment notices in accordance with the requirements of the law and relevant regulations, violating petitioner's right to due process.

According to petitioner, it received the First Notice and FNBS without proper receipt of the FAN. The issuance of the First Notice and FNBS violates due process because respondent issued such notice of collection, without petitioner having been properly served and timely received the PAN or FAN. Thus, both the First Notice and FNBS were prematurely issued.

Petitioner alleges that no fact was established to give rise to the presumption that the FAN was deemed received by petitioner. By the own admission of his witness, respondent failed to properly address the letter to any of petitioner's authorized addressees.

Respondent attempted to establish that the FAN was duly sent and received by petitioner, through the testimony of Mr. Armando Macatangay. Mr. Macatangay testified that he was the mailing custodian in 2011 for the Administrative Division of Revenue Region No. 6. Mr. Macatangay stated in his answer to Question No. 9 of his Judicial Affidavit dated October 8, 2013 that he was tasked with the mailing of the alleged FAN and demand letter to petitioner. He said that the envelope was addressed to Feati University, Inc. with no concrete, actual person to whom the letter was being brought to the attention to as the addressee. This is fatal to the presumption that respondent is trying to establish, specifically, that petitioner is deemed to have properly received the FAN. It should also be pointed out that even the FAN attached by respondent to Mr. Macatangay's Judicial Affidavit only shows that it was addressed to Feati University, Inc. without referring to any actual person.

The alleged failure of petitioner to promptly respond to respondent's FAN was caused by respondent's failure to ensure the proper labeling or addressing of the envelope with the correct and authorized addressee.

Petitioner likewise mentions that it is of no weight that the registry receipt contains the signature of a certain Rommel Abella. Petitioner adds that this cannot be construed as an actual or a constructive receipt by petitioner for the following reasons:

1. Mr. Rommel Abella had no authority whatsoever to receive the FAN. Mr. Abella is the property custodian of petitioner whose duty is to oversee the maintenance and repair of petitioner's facilities. His function is limited to matters with respect to the upkeep of petitioner's facilities and premises. It is not within his scope of authority to receive and understand the legal implications of letters sent by various government agencies, including the BIR.

2. In his Supplemental Judicial Affidavit, Mr. Gabriel Intengan testified and confirmed that Mr. Rommel Abella was not authorized to receive any official communication on behalf of petitioner. Mr. Intengan

presented petitioner's General Information Sheet for the year 2011, when the FAN was allegedly sent to petitioner, to prove that Mr. Abella was not an officer of petitioner and was never implicitly nor explicitly authorized to receive communication on behalf of petitioner.

3. Without any clear label or information in the envelope as to who the authorized addressee is and that it contained the FAN issued by the BIR, Mr. Abella could not be expected to presume that the document received is a FAN, which would require the immediate attention of the proper officials of petitioner, nor should he be expected to appreciate the gravity of his receipt in the computation of statutory periods.

4. In previous years, all correspondences from the BIR, except for the FAN, have been duly addressed to, received, and acted upon by petitioner's former internal auditor, Ms. Luz Narciso. In fact, during the preliminary conferences, Ms. Narciso had been in constant communication with the BIR and had rendered full cooperation and assistance in the audit of petitioner's accounting records. Thus, had respondent properly served the FAN upon petitioner or at least, promptly informed petitioner through its authorized representative of the issuance of the FAN by registered mail, petitioner would have promptly sought legal assistance and filed the appropriate protest, given the legal implications of the document.

On this issue, it must be pointed out that the requirement of informing the taxpayer of the assessment is mandatory in nature as provided in Section 228 of the National Internal Revenue Code of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99, the pertinent portions of which are quoted hereunder for ready reference:

> "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 preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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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." *(Emphasis supplied)*

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

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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 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."

Section 228 of the NIRC of 1997, as amended, provides that taxpayers must be informed of the facts and the law upon which the assessment was made; otherwise, **the assessment will be void**. In addition, the taxpayer is granted the opportunity to protest the assessment within thirty (30) days from receipt thereof and if the protest is denied or not acted upon by respondent within a given period of time, the taxpayer is given another remedy of filing an appeal before this Court.

Furthermore, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the FAN by respondent and the receipt thereof by the taxpayer as part of due process in the issuance of assessments.

After a careful scrutiny of the records, the Court finds that there was no valid service of the FAN to petitioner in this case.

Let it be stressed that it is imperative for respondent to satisfactorily prove the release, mailing or sending of the FAN. This was the pronouncement of the Supreme Court in the case of *Barcelon, Roxas Securities Inc. vs. Commissioner of Internal Revenue*[34], citing the case of *Nava vs. Commissioner of Internal Revenue*[35], the pertinent portion of which reads:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, **this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice**; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." *(Emphasis supplied)*

On this matter, respondent's witness, Ms. Ma. Paz Arcilla, the Revenue Officer IV-Chief of the Billing Section of the BIR, testified that their office issued to petitioner the FAN and the FLD dated June 29, 2011 and that their original copies were transmitted on the same day to the Administrative

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[34] G.R. No. 157064, August 7, 2006.
[35] G.R. No. L-19470, January 30, 1965.

Division of BIR Manila for mailing to petitioner, as evidenced by a transmittal with the instruction to mail them. Ms. Arcilla further stated that the Administrative Division forwarded to their office a photocopy of the transmittal letter to the Postmaster of the Central Post Office with information of registry receipt number of mailing of the FAN and FLD.[36]

The above testimony was further corroborated by Mr. Armando C. Macatangay, Administrative Assistant III of the Administrative Division of BIR Manila, stating that he mailed the subject FAN and FLD, and thereafter, the Central Post Office issued Registry Receipt No. 922443.[37]

In this regard, it must be noted that Section 3(v) of Rule 131 of the Rules of Court provides that a letter duly directed and mailed is **deemed received in the regular course of the mail**.

However, the facts to be proved to raise this presumption are (a) **that the letter was properly addressed with postage prepaid**, and (b) **that it was mailed**. Once these facts are proven, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie.[38]

In view of the Transmittal Letter[39], the Registry Receipt Card[40], and the testimonies of Ms. Arcilla and Mr. Macatangay, the Court finds that the FAN and the FLD were properly mailed.

Nevertheless, while it can be said that respondent has established the presumption that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail, the same is merely a disputable presumption.

In the case of *Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc.*[41] and in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[42], the Supreme Court held that **a direct denial of the receipt** of the mail **shifts the burden** upon the party favored by the

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[36] Judicial Affidavit of Revenue Officer Ma. Paz Arcilla, docket, vol. II, pp. 1023-1028.
[37] Judicial Affidavit of Armando C. Macatangay, docket, vol. I, pp. 419-428.
[38] *Barcelon, Roxas Securities, Inc. vs. Commissioenr of Internal Revenue,* G.R. No. 157064 August 7, 2006.
[39] Exhibit "R-9", docket, vol. I, p. 427.
[40] Exhibit "R-10", docket, vol. I, p. 428.
[41] G.R. No. L-38540, April 30, 1987.
[42] G.R. No. 157064, August 7, 2006.

presumption to prove that the mailed letter was **indeed received by the addressee**.

The witness for petitioner, Mr. Gabriel Intengan, petitioner's Vice-President and Chief Operations Officer from 2003 to 2012, testified that petitioner did not receive any FAN or FLD for the alleged deficiency taxes for fiscal year 2007 from respondent.[43] Petitioner's denial of the receipt of the FAN and the FLD was also mentioned in its letter to respondent dated December 22, 2011 in response to the FNBS dated December 8, 2011 issued to petitioner, stating that it never received the FLD and was not informed of the basis of the assessment nor was it even given the opportunity to protest the same.[44]

Since there is a direct denial of the receipt of the mail, the said denial shifts the burden upon respondent to prove that the mailed letter was indeed received by petitioner.

However, a scrutiny of the pieces of evidence presented by respondent reveals that the same are insufficient to prove that the FAN was indeed received by petitioner in accordance with law and pertinent jurisprudence.

Respondent mainly presented the alleged FAN and Registry Return Receipt as proof that said mail matter was received by petitioner.

In this regard, it bears stressing that mere presentation of the Registry Return Receipt is not enough to prove that the subject notices were indeed served. 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.[45]

As already mentioned, Mr. Macatangay, the Administrative Aide III of the Administrative Division of the BIR Manila, identified the Registry Receipt Card. However, as admitted by Mr. Macatangay during the cross examination, he did not see who really signed and accepted the return card.[46]

Furthermore, respondent failed to show that the person who signed the Registry Return Receipt is petitioner's authorized agent. It must be stressed

[43] Docket, vol. II, pp. 1263-1270.
[44] Exhibits "P-26" and "R-29", BIR Records, pp. 267-269.
[45] *Resterio vs. People of the Philippines*, G.R. No. 177438, September 24, 2012, citing *Ting vs. Court of Appeals*, G.R. No. 140665, November 13, 2000.
[46] Transcript of Stenographic Notes of the July 3, 2014 Hearing, pp. 25-27.

that 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."

The requirement that the FAN should be served on the addressee or a duly authorized agent of the addressee was also mentioned by this Court in the case of *People vs. Typingco*[47], as follows:

> "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.
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> 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." *(Emphasis supplied)*

In the case of *SVI Technologies, Inc. vs. Commissioner of Internal Revenue*[48], this Court held that there was no valid service of the FAN when respondent failed to prove that the mentioned receiving officer was authorized by petitioner to receive the questioned Formal Letter of Demand, to wit:

> "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;

[47] CTA Crim. Case No. O-114, May 16, 2012.
[48] CTA Case No. 8488, February 2, 2015.

they must be properly authenticated in order to serve as proof of receipt of the letters.

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

A perusal of the Certification dated February 20, 2013, 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, 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.

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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."

As further held in *Barcelon, Roxas Securities Inc. vs. Commissioner of Internal Revenue*[49]:

"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**." *(Emphasis supplied)*

In this case, a perusal of the Registry Return Receipt shows a signature as proof that a person received the letter. However, said Registry Return

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[49] G.R. No. 157064, August 7, 2006.

Receipt and the signature thereon are unauthenticated.[50] A further scrutiny of the evidence presented by respondent reveals that he failed to sufficiently prove that the signature in the Registry Return Receipt belongs to the authorized representative of petitioner.

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[51], the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

> ". . . 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**." *(Emphasis supplied)*

Considering that respondent failed to discharge the burden of proving that the FAN dated June 29, 2011 was actually received by petitioner or its duly authorized agent, the FAN is deemed to have not been issued by respondent.

Consequently, respondent's allegation that the FAN dated June 29, 2011 already attained finality for failure to protest the same is devoid of merit since petitioner cannot be expected to protest the FAN without first being properly informed of the basis of its tax liabilities.

Also, respondent violated petitioner's right to due process when he issued the Warrant of Distraint and/or Levy because no valid notice of assessment was sent to petitioner. "An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is

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[50] Docket, vol. I, p. 428.
[51] G.R. No. 155541, January 27, 2004.

evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence."[52] In this case, petitioner was not properly informed of the basis of its tax liabilities. And inasmuch as no valid notice of assessment was sent to petitioner, the Warrant of Distraint and/or Levy issued by respondent against petitioner allegedly arising from the subject FAN dated June 29, 2011 must be cancelled.

Lastly, anent petitioner's request that the "amount claimed" to be considered in the computation of the amount of the surety bond should not include penalties, surcharges and compromise penalties pursuant to CTA *En Banc* Resolution No. 02-2015, the Court finds merit in the granting of petitioner's Motion for Recomputation of Surety Bond, and notes the submission of the corresponding Revised Surety Bond.

With the foregoing findings of the Court, discussing the other issues raised by the parties becomes unnecessary.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessment against petitioner for deficiency VAT, deficiency EWT, and deficiency DST for fiscal year 2007 is **CANCELLED**.

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[52] *Commissioner of Internal Revenue vs. BSAF Coating + Inks Phils. Inc.*, G.R. No. 198677, November 26, 2014.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice