REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CORDERO INC., AGENCIA DE EMPENOS,
Petitioner,

C.T.A. EB NO. 275
(C.T.A. Case No. 7150)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 0 9 2007

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Cordero, Inc., Agencia De Empenos, seeking the reversal of the Resolutions dated November 3, 2006 and February 13, 2007 of the

[1] *Rollo*, pages 8 – 116 with Annexes.

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Second Division of this Court ("Court in Division") in C.T.A. Case No. 7150, which dismissed the case for failure of petitioner 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.

Antecedent Facts

The facts, as culled from the records of the case, are briefly narrated as follows:

Petitioner is a duly organized domestic corporation engaged in the pawnshop business with office address at 137 Carlos Palanca St., Quiapo, Manila.

On April 25, 2002, Mr. Benito Wong, a Revenue District Officer of the Bureau of Internal Revenue ("BIR"), sent a letter to petitioner informing the latter of its DST assessment and inviting the same for an informal conference regarding the BIR's proposed DST assessment.[2]

In response, petitioner sent a letter dated May 25, 2002 stating that, according to the Chamber of Pawnbrokers of the Philippines, Inc., the pawnshop business is not liable for the DST.[3] Another letter expressing the same view was sent by petitioner on July 15, 2003.[4]

On September 22, 2004, petitioner, through its counsel, sent a letter addressed to Ms. Edna L. Tesoriero, Chief of the Collection Section of the BIR-Manila. It insisted that there is no basis for the BIR to assess the DST on the pawnshop business for the reason that a pawn ticket is neither a

[2] *Id.*, at 64, "*Respondent's Pre-trial Brief*"
[3] *Id.*, at 47.
[4] *Id.*, at 48.

security nor a printed evidence of indebtedness invoking Presidential Decree ("PD") 114 and Central Bank ("CB") Circular 445. It also requested that the levy or seizure be suspended as petitioner has not received the Final Assessment Notice ("FAN") of the alleged DST liability.[5]

On September 30, 2004, a reply was made by Ms. Tesoriero explaining that PD 114 and CB Circular 445 are no longer controlling. It cited Sections 173 and 195 of the 1997 National Internal Revenue Code ("NIRC") as the specific law that is applicable on the matter. She also mentioned that Demand No. 3299 dated January 10, 2003 had already been sent to petitioner.[6]

In turn, petitioner, through counsel, in a letter dated December 16, 2004 stated that petitioner did not receive the Assessment Notice dated April 29, 2003 and the Report of Investigation dated January 10, 2003.[7]

On January 25, 2005, the Commissioner of Internal Revenue served upon petitioner a Warrant of Distraint and/or Levy dated January 17, 2005 to cover deficiency DST for the year 1999 in the total amount of P885,058.39 as follows:[8]

Assessment/Demand No.	Date Issued	Kind of Tax	Year	Amount
32-99	1-1-10-03	Def. DST	1999	P869,058.39
		Compromise		16,000.00
TOTAL				P885,058.39

[5] *Id.*, at 49-50.
[6] *Id.*, at 51-52.
[7] *Id.*, at 53 - 54.
[8] *Id.*, at 46.

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On February 18, 2005, petitioner filed a Petition for Review with the Court in Division praying that the Warrant of Distraint and/or Levy be declared void *ab initio* and of no effect. Petitioner argued that no FAN was served on it for the alleged deficiency DST covering year 1999; that PD 114 exempts pawnshop business from DST; and that Sections 173 and 195 of the 1997 NIRC do not cover the pawnshop business.[9]

On April 4, 2005, respondent Commissioner of Internal Revenue filed his Answer interposing the following Special and Affirmative Defenses:

> "11. The subject assessments are valid and correct and the petitioner has the burden of proof to impugn their 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 a BIR examiner and approved by her superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).
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> 12. 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].
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> 13. BIR Ruling 221-91 provides that pawnshop tickets are subject to DST because pawnshop ticket virtually evidences a pledge. Since petitioner lent money at interest and requires a pledge of personal property as security, the essence of its operation is lending money. Thus, petitioner's pawnshop tickets shall likewise be subject to DST pursuant to Section 195 of the Tax Code, as amended.
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> 14. Pawnshops are engaged in the business of lending money secured by pledges as mentioned under Article 2123 of the Civil Code. In fact, the provisions of Title XVI on Pledge, Mortgage and Antichresis of the Civil Code are suppletory to Pawnshop Regulatory Act (PD No. 114) and other special laws and regulations on pawnshops. Hence, it is clear that pawn

[9] *Id.*, at 33 – 56.

tickets issued by the petitioner are documents subject to DST on pledges of personal property under Section 195 of the Tax Code *(Revenue Memorandum Circular No. 43-91, May 27, 1991; BIR Ruling No. 221-91, October 30, 1991).*

15. *The pawn tickets are documents that pawn operators issue to prove contract of pledge.* If pawn tickets are not documents evidencing pledge, will there be any other documents that would show pledge transactions? Definitely, there is none. Thus, pawn ticket is the logical document subject to DST on pledges of personal property under Section 195 of the Code.

16. The subject DST assessment of P869,058.39 was duly served to the petitioner on January 13, 2003 under Registry Receipt No. 34946 at the petitioner's address at 137 Carlos Palanca Street, Quiapo, Manila. As per record, despite service of the said DST assessment, petitioner failed to file its administrative protest pursuant to Section 228 of the 1997 Tax Code, hence, the aforesaid DST assessment has become final, executory and demandable.

17. The service of Warrant of Distraint and/or Levy on January 25, 2005 against the petitioner is simply an act to enforce the collection of the DST assessment that has become final, executory and demandable. An assessment is not an action or proceeding for the collection of taxes. It is merely a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof. It is a step preliminary but essential to warrant of distraint and/or levy, if still feasible, and also to establish a cause for judicial action (Alhambra Cigar and Cigarette Manufacturing Coampany [sic] vs. Collector of Internal Revenue, May 29, 1959). The respondent's service of Warrant of Distraint and/or Levy to petitioner on January 25, 2005 is proper.

18. The Court of Tax Appeals has no jurisdiction to take cognizance of the petition because the petitioner did not file its administrative protest on the subject DST assessment, hence, there will be no decision or ruling of the respondent appealable to the Court of Tax Appeals. Since the Court of Tax Appeals is a court of special jurisdiction, it can take cognizance only of such matters as are clearly within its jurisdiction (Ker & Co., Ltd vs. Court of Tax Appeals, 4 SCRA 160, 163 [1962])."[10]

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[10] *Id.*, at 59 – 61.

The Court in Division then required the parties to submit their pre-trial briefs and scheduled the pre-trial conference on May 12, 2005.[11] The pre-trial was however reset to June 23, 2005.[12]

On June 23, 2005, the counsel for respondent manifested that he would be filing a Motion to Dismiss within thirty (30) days and, in the meantime, requested for the resetting of the pre-trial conference.[13]

On July 22, 2005, respondent filed a Motion to Dismiss on the ground that the Court of Tax Appeals has no jurisdiction to take cognizance of the case as the DST assessment issued by respondent against petitioner has become final, executory and demandable due to the petitioner's failure to file the mandatory administrative protest within thirty (30) days from receipt of the assessment.[14]

On August 18, 2005, petitioner filed a Comment/Opposition maintaining that respondent has not served petitioner with a FAN.[15]

During the hearing of the Motion to Dismiss, respondent presented the testimonies of Mr. Licerio Farillo, Letter Carrier of the Philippine Postal Corporation[16] and Ms. Teresita Maglunog, Chief of Records Section, Administrative Division, BIR Revenue Region 6, Manila.[17]

On April 17, 2006, respondent filed its Formal Offer of Evidence[18] to which a Comment/Opposition[19] was filed by petitioner.

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[11] *Id.*, at 63.
[12] *Records*, C.T.A. Case No. 7150, page 48.
[13] *Id.*, at 55.
[14] *Rollo*, pages 72 – 82.
[15] *Id.*, at 83 – 88.
[16] *Records*, C.T.A. Case No. 7150, page 114.
[17] *Id.*, at 116.
[18] *Rollo*, pages 94 – 99.

The Ruling of the Court in Division

On November 3, 2006, the Court in Division rendered a Resolution dismissing the case. It ratiocinated that:

> "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:
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> > '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.
> >
> > xxx xxx
> >
> > 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:
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> 1) Exhibit '1' – Record of Dispatch and Delivery of Registered Mail by Letter Carriers dated January 14, 2003 of Postman Lecerio Farillon;
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> 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.,

[19] *Id.*, at 100.

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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 Section10, 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 applied 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.

For all the foregoing, We have no alternative but to grant the Motion to Dismiss."[20]

Aggrieved, petitioner moved for reconsideration on November 28, 2006 but the Court in Division denied the same in its Resolution dated February 13, 2007.

Hence, the present recourse.

The Issues

In the instant Petition for Review, petitioner raises the following issues:

"I. WHETHER OR NOT THE HONORABLE COMMISSIONER OF INTERNAL REVENUE ISSUED AND SENT A FINAL ASSESSMENT NOTICE FOR DOCUMENTARY STAMP TAX TO PETITIONER IN THE AMOUNT OF P885,058.39 FOR THE TAXABLE YEAR 1999;

[20] *Id.*, at 101 – 104, "*Assailed Resolution dated November 3, 2006*".

II. WHETHER OR NOT THE SENDING BY REGISTERED MAIL OF A DEMAND LETTER OR MAIL MATTER FOR PAYMENT OF DOCUMENTARY STAMP TAX CONSTITUTES SUFFICIENT COMPLIANCE WITH THE PROVISION OF SEC. 228 OF THE NATIONAL INTERNAL REVENUE CODE AND IMPLEMENTING RULES THEREOF."

Simply put, the issue is whether or not petitioner received the FAN for payment of DST for the year 1999 in the amount of P885,058.39.

The Ruling of the Court En Banc

The Petition for Review must fail.

Petitioner contends that the Court in Division erred in holding that the respondent issued and sent a FAN for DST to petitioner in the amount of P885,058.39 for the taxable year 1999. It insists that it was not served with a FAN as mandated in Sec. 3.1.4 of Revenue Regulations (RR) 12-99, which reads:

> "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* xxx 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."

To bolster its stand, petitioner highlights respondent's failure to attach a copy of the FAN to its Answer, Pre-trial Brief, or Motion to Dismiss. Petitioner went on to say that even the documents attached to the Motion to Dismiss are not sufficient to prove that what respondent sent was indeed a FAN. Thus, petitioner maintains its position that the failure of respondent to issue and send a FAN renders the Warrant of Distraint and/or Levy void *ab initio*.

On the other hand, respondent comments that the assailed Resolutions of the Court in Division were duly made with factual and legal bases, hence, should not be disturbed in the absence of any showing that the Court in Division committed gross error in the appreciation of facts.

We agree with respondent.

The Court in Division during the hearing of the Motion to Dismiss was in a better position to assess the evidence presented before it. It had the unique opportunity of hearing the witnesses testify and of observing the demeanor of the witnesses on the stand. Thus, We find no reason to reverse the finding of the Court in Division as it is supported by the evidence and the prevailing jurisprudence.

Service of the assessment notice to the taxpayer may be by registered mail or by personal delivery. If the assessment is served by registered mail, and the original was not returned to the respondent, the presumption is that the taxpayer received the said assessment.[21] This is based on Section 3 (v), Rule 131 of the 1997 Rules of Court which provides that:

> "**Sec. 3. Disputable presumptions.** – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

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[21] CAL Holdings Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. CASE No. 6882, May 26, 2006.

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xxx xxx

(v) That a letter duly directed and mailed was received in the regular course of the mail;

xxx xxx" *(Emphasis supplied)*

The facts to be proven in order 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 proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. [22]

However, as explained by the Supreme Court in the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, 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.[23]

In the case at bar, petitioner denies having received the FAN. Therefore, the burden to prove otherwise shifted to the respondent. To prove its claim, respondent presented the following evidence:

(1) Record of Dispatch and Delivery of Registered Mail by Letter Carriers dated January 14, 2003 of Postman Lecerio Farillon;

(2) Certification dated June 23, 2005 by Ms. Fe P. Gaoiran, Head, Records Unit of Central Post Office, Manila; and

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[22] Hambrecht & Quist v. Commissioner of Internal Revenue, C.T.A. CASE NO. 6362, September 24, 2004.
[23] G.R. No. 157064, 498 SCRA 126 (2006).

(3) Transmittal slip of Assessment Notice and Demand Letter to Cordero Inc., Agencia de Empenos by Assessment Division, BIR Revenue Region No. 6, Manila.

To Our mind, these documents, particularly the Certification from the Central Post Office, which were all duly identified in court by the witnesses, are sufficient to show that indeed petitioner received the FAN. It is well to note that in the case of *Barcelon*, the Supreme Court indicated that independent evidence, such as the registry receipt of the assessment notice, or **a certification from the Bureau of Posts,** could be presented to prove that the mailed letter was indeed received by the addressee. This is precisely what respondent has done in this case.

Thus, We agree with the ruling of the Court in Division that respondent has sufficiently proved that petitioner received the FAN. And since petitioner failed to file an administrative protest within the thirty (30) day period, the FAN had become final, executory and demandable, pursuant to Section 228[24] of the 1997 NIRC.

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[24] SECTION 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:

(a)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
(b)When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(c)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
(d)When the excise tax due on excisable articles has not been paid; or
(e)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.

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.

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WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Resolutions are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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