

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

GJM PHILIPPINES
MANUFACTURING, INC.,

Petitioner,

C.T.A. CASE NO. 6875

Members:

- versus -

ACOSTA, Chairperson
UY, and
FABON-VICTORINO, JJ.

Promulgated:

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

JAN 26 2010, 11:30am

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DECISION

UY, J.:

Before the Court is a Petition for Review seeking the cancellation and withdrawal of the deficiency income tax assessment in the amount of ₱ 1,480,099.29 for taxable year 1999, and the lifting of the warrant of distraint and/or levy pursuant thereto, both issued by respondent, Commissioner of Internal Revenue, against petitioner, GJM Philippines Manufacturing, Inc.

THE FACTS

Petitioner is a corporation, duly organized and existing under the laws of the Republic of the Philippines,¹ and also duly registered as a Philippine

¹ Par. A, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 313. Exhibit "A", Docket, pp. 386 to 401.

Export Zone Authority (PEZA) investor/locator.² Its principal place of business, at the time of the issuance of the assessment in dispute, was at Phase 2 Lot 9 Block 4, Rosario, Cavite.³ Petitioner was engaged in the manufacture and export of apparel and an exporter with secondary license from the PEZA with manufacturing facilities in Rosario, Cavite export processing zone.⁴

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested by law to decide disputed assessment and to enforce the provisions of the National Internal Revenue Code (NIRC), and other tax laws, with office address at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.⁵

On April 12, 2000, petitioner filed its Annual Income Tax Return for taxable year 1999.⁶ Sometime in 2001, Warnaco (HK) Ltd., then petitioner's parent company, underwent bankruptcy proceedings, and this resulted in the conveyance of ownership of petitioner and its global affiliates to Luen Thai Overseas Limited in December 2001. Thereafter, the present owner set in place streamlining efforts, among which was the transfer of petitioner's Makati Office to the facilities in Rosario, Cavite.⁷

On August 26, 2002, petitioner filed a letter dated May 29, 2002 with Revenue District Office (RDO) No. 54-Trece Martirez, informing Atty. Ner Alfredo B. Plana, Revenue District Officer, that petitioner will be canceling its

² Par. D, Stipulation of Facts, JSFI, Docket, p. 313.

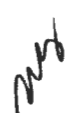
³ Par. B, Stipulation of Facts, JSFI, Docket, p. 313.

⁴ Par. C, Stipulation of Facts, JSFI, Docket, pp. 313 to 314.

⁵ Par. E, Stipulation of Facts, JSFI, Docket, p. 314.

⁶ Exhibit "EE", Docket, pp. 480 to 491.

⁷ Par. H, Stipulation of Facts, JSFI, Docket, p. 314.



registered address from RDO No. 48, and transferring it to RDO No. 54. Petitioner further alleges that its Makati office, which was previously located in Barangay Pio del Pilar, Makati City, had been closed and transferred to its Cavite office/factory in PEZA, Rosario, Cavite, effective April 29, 2002.⁸ And on the same date, petitioner allegedly filed with the same RDO No. 48, an Application for Registration Information Update (BIR Form No. 1905), showing its transfer of home RDO from "048" (old RDO) to "058" (new RDO), and with an indication therein of its new registered address, *i.e.*, Phase II Lot 9 Blk. 4 PEZA Rosario, Cavite.⁹

Petitioner's request for transfer of its tax registration from RDO 48 to RDO 54 was confirmed through Transfer Confirmation Notice No. OCN ITR 000018688 dated August 26, 2002, duly issued by the BIR RDO 054, Revenue Region No. 9.¹⁰

On October 18, 2002, the BIR, through Revenue District Officer Ner Alfredo B. Plana, sent a letter of informal conference dated October 14, 2002, by facsimile transfer, informing petitioner that the report¹¹ of investigation on its income and business tax liabilities for the calendar year ended December 31, 1999 had been submitted.¹² The report reveals that petitioner is still liable for an income tax deficiency and corresponding 20% interest as well as compromise penalty in the total amount of ₱ 1,192,541.51.¹³ The said tax deficiency resulted from certain disallowances / understatements, to wit :

⁸ Exhibit "DD", Docket, p. 479.

⁹ Exhibit "CC", Docket, p. 478.

¹⁰ Exhibit "D", Docket, p. 405. Par. G, Stipulation of Facts, JSFI, Docket, p. 314.

¹¹ Exhibit "2", BIR Records, pp. 660 to 662.

¹² Exhibit "3", BIR Records, p. 633.

¹³ Exhibit "3-b", Docket, p. 632.

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(a) Loading and Shipment / Freight Out in the amount of ₱ 2,354,426.00 ;
(b) Packing expense, ₱ 8,859,975.00; (c) Salaries and Wages, ₱ 2,717,910.32;
(d) Staff Employee Benefits, ₱ 1,191,965.87, and (e) Fringe Benefits Tax,
in the amount of ₱ 337,814.57.¹⁴

In its letter dated October 24, 2002, petitioner refuted the foregoing findings¹⁵ through its Financial Controller, Ms. Erlinda G. Datu.¹⁶

On February 12, 2003, respondent issued a Pre-Assessment Notice¹⁷ and Details of Discrepancies¹⁸ against petitioner¹⁹ sustaining the above-stated findings, and giving petitioner the opportunity to present in writing its side of the case within fifteen (15) days from receipt thereof.

On April 14, 2003, respondent issued the undated²⁰ Assessment Notice No. IT-17316-99-03-282²¹ against petitioner, indicating a deficiency income tax assessment in the amount of ₱ 1,480,099.29.²² Pursuant to an undated Details of Discrepancies²³, said amount was computed as follows:

Net taxable income per return	₱ 2,848,414.00
Add: Discrepancies per investigation:	
Disallowed loading and shipment expenses	2,354,426.00
Non-deductible raw materials:	

	<u>Packing</u>	<u>Local</u>	<u>Imported</u>
Beg. Inventory		₱ 814,379.21	₱ 337,245.21

¹⁴ *Id.*

¹⁵ Exhibit "4", BIR Records, pp. 641 to 642; Exhibit "P", Docket, pp. 423 to 424. Par. Q, Stipulation of Facts, JSFI, Docket, p. 316.

¹⁶ Par. U, Stipulation of Facts, JSFI, Docket, p. 316.

¹⁷ Exhibit "N", Docket, p. 420. Exhibit "5", BIR Records, p. 693.

¹⁸ Exhibit "O", Docket, pp. 421 to 422. Exhibit "5-b", BIR Records, pp. 691 to 692.

¹⁹ Pars. O and P, Stipulation of Facts, JSFI, Docket, p. 315.

²⁰ As stipulated by the parties in Par. M., Stipulation of Facts, JSFI, Docket, p. 315.

²¹ Exhibits "K" and "L", Docket, pp. 415 to 417. Exhibits "6" and "7", BIR Records, pp. 698, 694 to 695.

²² Pars. M and N, Stipulation of Facts, JSFI, Docket, p. 315.

²³ Exhibit "M", Docket, pp. 418 to 419. Exhibit "7-b", BIR Records, pp. 650 to 651.

Add: Purchases	<u>6,216,716.00</u>	<u>1,842,555.00</u>	
Total Available for use	<u>₱ 7,031,095.21</u>	<u>₱ 2,179,800.21</u>	
Less: Ending Inventory	<u>340,509.03</u>	<u>10,410.55</u>	
Packing Materials Used	<u>₱ 6,690,586.18</u>	<u>₱ 2,169,389.66</u>	8,859,975.84
Disallowed salaries and wages			2,717,910.32
Disallowed Staff Employees Benefits			1,191,965.87
Non-Deductible Fringe Benefit Tax			<u>337,814.57</u>
Taxable income per investigation			<u>₱ 18,310,506.60</u>
Income Tax due thereon (5%)			<u>₱ 915,525.33</u>
Less: Payments			-
Deficiency income tax			<u>₱ 915,525.33</u>
Add: Interest 04-15-00 to 05-15-03			<u>564,573.96</u>
TOTAL AMOUNT DUE			<u>₱ 1,480,099.29</u>

On July 25, 2003, respondent issued a Preliminary Collection Letter²⁴ addressed to petitioner,²⁵ requesting the latter to pay the aforesaid income tax deficiency for the taxable year 1999. It is noted that said Letter was addressed to the President/General Manager of petitioner at its former address: 4700 4/E Goldrich Mansion, Cuenco Street, Pio del Pilar, Makati City.

On August 18, 2003, respondent issued a Final Notice Before Seizure²⁶ addressed to petitioner²⁷ informing the latter that it was being given a last opportunity to make the necessary settlement of the same deficiency income tax for taxable year 1999. Petitioner claims that although said notice indicated its new address at Phase 2 Lot 9 Blk 4, PEZA, Rosario, Cavite, the same never reached it.

On December 8, 2003, petitioner received a Warrant of Dstraint and/or Levy²⁸ from the BIR RDO 48-West Makati, which stemmed from Assessment/Demand No. IT-17316-99-03-282 on April 14, 2003, involving the

²⁴ Exhibit "F", Docket, p. 407. Exhibit "8", BIR Records, p. 710.

²⁵ Par. K, Stipulation of Facts, JSFI, Docket, p. 315.

²⁶ Exhibit "G", Docket, p. 408. Exhibit "9", BIR Records, p. 711.

²⁷ Par. L, Stipulation of Facts, JSFI, Docket, p. 315. The Final Notice Before Seizure indicated petitioner's new address at Phase 2 Lot 9 Blk 4, PEZA, Rosario, Cavite, but allegedly never reached petitioner.

²⁸ Exhibit "E", Docket, p. 406. Exhibit "10", BIR Records, p. 714.

amount of ₱ 1,480,099.29, as deficiency income tax for taxable year 1999.²⁹

Accompanying the said Warrant were the Preliminary Collection Letter dated July 25, 2003, and the Final Notice Before Seizure dated August 18, 2003.³⁰

On January 7, 2004, petitioner filed its Letter Protest dated January 6, 2004³¹ against the said Warrant of Dstraint and/or Levy dated November 27, 2003.³² And on January 26, 2004, petitioner received respondent's letter dated January 15, 2003,³³ supposedly constituting the respondent's final decision on the disputed assessment, denying petitioner's protest for lack of factual and legal bases.³⁴

In view of respondent's denial of petitioner's letter-protest dated January 6, 2004, petitioner filed the instant Petition for Review on February 24, 2004.³⁵

On May 28, 2004, respondent filed his Answer³⁶ alleging the following special and affirmative defenses:

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

13. The Petition for Review filed by petitioner states NO CAUSE OF ACTION, hence, dismissible under Rule 16 of the Rules of Civil Procedure, there being NO DISPUTED ASSESSMENT to speak of, in order that this Honorable Court may acquire jurisdiction over the case, considering the fact that the amount being collected by the BIR per Warrant of Dstraint and/or Levy dated November 27, 2003 has long became final, executory and demandable.

²⁹ Par. I, Stipulation of Facts, JSFI, Docket, pp. 314 to 315.

³⁰ Pars. 8 to 11, Petitioner's Memorandum, Docket, p. 613. Pars. 7 to 10, Petition for Review, Docket, pp. 3 to 4.

³¹ Exhibit "J", Docket, pp. 411 to 414. Exhibit "11", BIR Records, pp. 743 to 746.

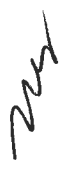
³² Par. V, Stipulation of Facts, JSFI, Docket, p. 316.

³³ Exhibit "12", BIR Records, p. 747.

³⁴ Par. J, Stipulation of Facts, JSFI, Docket, p. 315.

³⁵ Par. F, Stipulation of Facts, JSFI, Docket, p. 314.

³⁶ Docket, pp. 202 to 208.



14. Pursuant to Section 218 of the 1997 Tax Code, it states that '*No Court shall have the authority to grant injunction to restrain the collection of any National Internal Revenue Tax, fee or charges imposed by this Code*', this Honorable Court, in the instant case, has no authority to restrain the collection of taxes (i.e. income) which has long become final, executory and demandable. The justification for the rule is found in several cases decided by the Supreme Court fact back in the case of ***Churchill and Tait vs. Rafferty et al.***, **32 Phils. 580**, which held that "A provision in an internal revenue law prohibiting the court from enjoining the collection of an internal revenue tax is not invalid as opposed to the due process and equal protection clause of the constitution. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.'

15. Section 228 of the 1997 Tax Code, partly provides, viz:

'Sec. 228. **Protesting of Assessment.**— 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.***' (Emphasis supplied)

In relation thereto, Section 3.1.7 of Revenue Regulations No. 12-99, provides that:

Section 3.1.7 – **Constructive Service** – If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from the date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer.'

In the instant case, the fact that the BIR received no response from petitioner within the prescribed period from the date the undated Formal Assessment Notice (FAN) No. IT-17316-99-03-282, was posted by registered mail, on April 14, 2003, sent to its new address located at Phase 2, Lot 9, Blk. 4, PEZA, Rosario, Cavite, assessing petitioner the deficiency income tax for taxable year 1999, said notice (i.e. FAN) of assessment was considered to have been actually or constructively received by the petitioner.



Accordingly, the fact that petitioner filed its administrative protest with the Bureau of Internal Revenue only on January 7, 2004, when it was deemed to have constructively received the said undated Formal Assessment Notice No. IT-17316-99-03-282, which was posted by registered mail on April 14, 2003, said deficiency income tax assessment issued to petitioner have already become final and executory by operation of law, for failure of petitioner to file its administrative protest within the reglementary period of thirty (30) days.

16. Since the assessments have become final, this Honorable Court has no jurisdiction to act on the instant petition. Hence, the Warrant of Dstraint and/or Levy issued to petitioner is valid and enforceable.

17. The Letter Protest dated January 6, 2004 of petitioner is not a protest contemplated under Section 228 of the 1997 Tax Code, to the undated Formal Assessment Notice No. IT-17316-99-03-282, but a protest to the Warrant of Dstraint and/or Levy dated November 27, 2003, which shows that the 1999 deficiency income tax assessment issued to petitioner has long become final, executory and demandable.

18. Assuming, but without conceding that petitioner received the undated Formal Assessment Notice No. IT-17316-99-03-282 only January 26, 2004, said assessment is still valid since the same was served by the BIR to petitioner at its new address located at Phase 2, Lot 9, Blk. 4, PEZA, Rosario, Cavite, by registered mail on April 14, 2003, which is within the prescriptive period under Section 203 of the 1997 Tax Code.

It is a settled rule in taxation that an assessment is deemed made for the purpose of giving effect thereto if it is made within the prescribed period and is released, mailed, or sent to the taxpayer also within the same period. It is not required that the notice be received by the taxpayer within the prescribed period. But the sending of the notice must be duly proven. (*Basilan Estate, Inc., vs. CIR, L-22429, Sept. 5, 1967*)

19. The fact that the Preliminary Assessment Notice and Formal Assessment Notice were served to petitioner, at its new address located at Phase 2, Lot 9, Blk. 4, PEZA, Rosario, Cavite, and the details of the proposed assessment of petitioner's income tax liability for taxable year 1999 were properly acknowledged by petitioner's representative, ERLINDA G. DATU, Financial Controller, when she submitted a reply dated October 24, 2002, protesting the said assessment, it is, therefore clear that respondent has complied with the procedural due process under Section 228 of



the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99.

20. Assuming, without conceding that this Honorable Court has jurisdiction over the case, petitioner was assessed for deficiency income tax for taxable year 1999 for the reason that petitioner being a PEZA registered entity is subject to the 5% special tax rate based on gross income earned, hence, the audit investigation of the BIR was concentrated on the composition of the cost of goods manufactured which was deducted from its gross sales. Accordingly, taking in consideration the provisions of Section 4.1 of the PEZA Resolution No. 00-01, the claimed expense of petitioner which were included as part of the cost were disallowed. These should have been deducted as operating expense and not as a cost of goods manufactured.

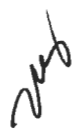
21. Verification disclosed that the portion of Loading and Shipment Expense of petitioner deducted as part of the cost was composed of cost of freight of finished products from place of production to the place of shipment and expenses incurred before the goods are shipped out of the country, hence, considered as part of selling expense.

22. Verification disclosed that the packing materials was included in the raw materials account which petitioner claimed as deduction from its sales to arrive at gross taxable income. Since the product of the company are garments, the packing materials does not form part of the products, thus, cannot be considered as part of the cost.

23. As to the disallowance of Staff Employees benefits, verification showed that this account which petitioner included in the overhead account as part of cost are benefits given to officers and staff of the company in the form of wages of drivers and maids, house rental and staff uniforms who are not performing the job directly related to production of its garments product.

24. As to the disallowance of Salaries and Wages, verification disclosed that the same were disallowed since it represent the salaries of officers and staff who are not directly involved in the production process, hence, cannot be considered as part of indirect labor and cannot be deducted from gross sales to arrive at gross income.

25. As to the non-deductibility of Fringe Benefit Tax, verification disclosed that the tax on fringe benefits given to petitioner's employees holding managerial and supervisory positions was



deducted as part of the cost instead of deducting it as part of expense under RR 3-98 dated May 21, 1998.

26. Petitioner failed to comply with the requirements under Section 34 (A) (1) (b) of the Tax Code which partly provides:

'(b) Substantiation Requirements.— No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.'

27. The assessments issued against petitioner for deficiency income tax, for taxable year 1999, covered under Formal Assessment Notice No. IT-17316-99-03-282 was made in accordance with law and regulations.

28. All presumptions are in favor of the correctness of tax assessments."

On June 6, 2004, the parties submitted their Joint Stipulation of Facts and Issues,³⁷ which was approved by this Court in the Resolution dated June 20, 2005.³⁸

During trial, petitioner and respondent presented their respective oral and documentary evidence, and correspondingly, filed their respective formal offer of exhibits. Meanwhile, respondent forwarded the BIR Records (consisting of 756 pages) pertaining to this case on October 25, 2006.³⁹

Upon the filing of the parties' respective memorandum on January 12, 2009⁴⁰ by respondent, and on January 20, 2009⁴¹ by petitioner, this case was

³⁷ Docket, pp. 313 to 318.

³⁸ Docket, p. 319.

³⁹ Docket, p. 502.

⁴⁰ Docket, pp. 598 to 608.

⁴¹ Docket, pp. 611 to 633.

deemed submitted for decision per this Court's Resolution dated February 3, 2009.⁴² Hence, this Decision.

THE ISSUES

The issues as stipulated by the parties, are as follows:

"A. Whether or not the Warrant of Dstraint and/or Levy against Petitioner was issued pursuant to a valid assessment for alleged deficiency income taxes totaling P1,480,099.29 for taxable year 1999.

B. Whether or not the audit findings upon which Respondent based the assessment for alleged deficiency income taxes of Petitioner was correct.

C. Whether or not the period for assessment of deficiency income tax for taxable year 1999 has prescribed.

D. Whether or not the deficiency income tax assessment of Petitioner, for taxable year 1999 has already become final, executory and demandable for failure of Petitioner to file its administrative protest within the 30 days reglementary period.

E. Whether or not the Letter Protest dated January 6, 2004 of Petitioner is a protest against the 1999 deficiency income tax assessment, or as against the Warrant of Dstraint and/or Levy dated November 27, 2003.

F. Whether or not the Formal Assessment Notice (FAN No. IT-17316-99-03-282) issued by the BIR to Petitioner was served to the latter within the prescriptive period under Section 203 of the 1997 Tax Code.

G. Whether or not Petitioner being a PEZA registered entity is subject to the 5% special tax rate based on gross income earned received.

H. Whether or not the disallowance by the Petitioner's claimed deductions from its gross income, such as, Loading and Shipment Expenses, Raw Materials, Salaries and Wages, Staff Employees Benefits and Fringe Benefits is proper and valid.⁴³

Looking at the foregoing issues raised by the parties, the Court finds

⁴² Docket, p. 638.

⁴³ *JSFI*, Docket, pp. 317 to 318.



that the issue raised in paragraph "F" should be addressed first, as it will determine compliance with the prescriptive period provided under Section 203 of the National Internal Revenue Code (NIRC) of 1997 in the issuance of the subject assessment.

Petitioner's Arguments

Petitioner postulates that the Warrant of Dstraint and/or Levy were issued pursuant to an invalid assessment because it was allegedly not properly notified of the said assessment in violation of the due process clause of the Constitution. It further argues that the period for assessment has already prescribed; that the Formal Assessment Notice was not issued within the prescriptive period as provided under Section 203 of the NIRC of 1997; and that the subject deficiency income tax assessment has not become final, executory and demandable.

Finally, according to petitioner, granting without conceding that it was validly notified of the assessment, it is not liable for the deficiency income tax in 1999 because the audit findings of the respondent are erroneous, since the disallowed expenses are considered allowable deductions under the applicable PEZA rules.

Respondent's Counter-Arguments

Respondent counter-argues that the subject Formal Assessment Notice has become final, executory and demandable, pursuant to Section 228 of the NIRC of 1997; that the Letter Protest dated January 6, 2004 of petitioner filed with the BIR is a protest against the Warrant of Dstraint and/or Levy dated November 27, 2003, and **not** a protest against the said Formal



Assessment Notice issued by the BIR; and that the same Formal Assessment Notice was issued within the prescriptive period under Section 203 of the NIRC of 1997, and has factual and legal bases.

THE COURT'S RULING

As mentioned earlier, We shall first resolve the issue raised in paragraph "F" of the parties' stipulated issues, to wit"

"F. Whether or not the Formal Assessment Notice (FAN No. IT-17316-99-03-282) issued by the BIR to Petitioner was served to the latter within the prescriptive period under Section 203 of the 1997 Tax Code."

Section 203 of the NIRC of 1997 provides as follows:

"SEC. 203. Period of Limitation Upon Assessment.— Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)—year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Based on the foregoing legal provision, the Bureau of Internal Revenue has three (3) years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment.



However, it must be emphasized that the assessment is deemed made only when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment.⁴⁴

In the present case, petitioner filed its Annual Income Tax Return for taxable year 1999 on April 12, 2000.⁴⁵ The last day for filing by petitioner of its return was on April 15, 2000,⁴⁶ thus, giving respondent until April 15, 2003 within which to send an assessment notice. While respondent avers that it sent through registered mail the subject assessment notice on April 14, 2003, within the three (3)-year prescriptive period, petitioner denies having received the said assessment notice from respondent. Petitioner alleges (i) that it came to know of the deficiency income tax assessment only on December 8, 2003 when it was served with the Warrant of Distrainment and/or Levy; and (ii) that it was able to receive the Formal Assessment Notice and the Details of Discrepancies on January 26, 2004, when the same documents were attached to respondent's letter dated January 15, 2004.⁴⁷

The settled rule in our jurisprudence is that when mail matter is sent by registered mail, there may exist a presumption, set forth under Section 2(v), Rule 131 of the Rules of Court, that it was received in the regular course of

⁴⁴ *Republic of the Philippines vs. De la Rama, et al.*, G.R. No. L-21108, November 29, 1966, citing *Bautista and Corrales Tan v. Collector of Internal Revenue*, L-12259, May 27, 1959.

⁴⁵ Exhibit "EE", Docket, pp. 480 to 491.

⁴⁶ Section 77(B) of the NIRC of 1997 provides as follows:

"SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*—

xxx xxx xxx

(B) *Time of Filing the Income Tax Return.*— The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. **The final adjustment return shall be filed on or before the fifteenth (15th) day of April**, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." (*Emphasis supplied*)

⁴⁷ Pars. 8 to 22, Petitioner's Memorandum, Docket, pp. 613 to 616.



mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. 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 mails.⁴⁸

To prove the foregoing necessary facts, respondent presented the following evidence: *first*, the fact that the subject Formal Assessment Notice and Details of Discrepancies were mailed on April 14, 2003 was testified to by Mr. Gerardo L. Martinez, Property Custodian, Records Section of the BIR Administrative Division;⁴⁹ *second*, an examination of the said documents reveal that these were properly addressed to petitioner; *third*, to prove that the postage thereon was prepaid was established by the envelope⁵⁰ purportedly used in mailing the said documents, as it bears the date “April 14, 2003” stamped by the Makati Central Post Office.

The foregoing evidence presented by respondent gives rise to the presumption that the said Formal Assessment Notice and the Details of Discrepancies were received by petitioner in the regular course of mail.

However, while a mailed letter is deemed received by the addressee in the ordinary course of the mail, still, this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the

⁴⁸ *Nava vs. Commissioner of Internal Revenue*, G.R. No. L-19470, January 30, 1965; *Protector's Services, Inc. vs. Court of Appeals, et al.*, G.R. No. 118176, April 12, 2000.

⁴⁹ Exhibit “13”, Docket, pp. 540 to 541.

⁵⁰ Exhibit “Z”, Docket, p. 455.



burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.⁵¹

Therefore, considering that petitioner denies receipt of the said mail, it behooves upon respondent to prove that it was indeed received by petitioner.

To prove that the subject mail was served upon petitioner, respondent offered in evidence the Transmittal Letter No. 282 dated April 14, 2003⁵² duly prepared and signed by Ms. Ma. Nieva A. Guerrero, as Chief of the Assessment Division of BIR Revenue Region No. 8-Makati. In the said Transmittal Letter, certain entries were made regarding petitioner, namely, its name, the assessment number, the tax year, the kind of tax, and the amount of the deficiency tax. A stamp mark of the Makati Central Post Office with date (*i.e.*, "April 14, 2003") also appears on the same Transmittal Letter.

Notably however, respondent did not present Ma. Nieva A. Guerrero to testify on the said Transmittal Letter dated April 14, 2003 which she supposedly prepared and signed, considering that petitioner has denied having received the subject Formal Assessment Notice and the Details of Discrepancies. Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained,⁵³ and offered before this Court, yet respondent failed to do so.

⁵¹ *Republic of the Philippines vs. Court of Appeal, et al.*, G.R. No. L-38540, April 30, 1987; *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

⁵² Exhibit "14", Docket, p. 542.

⁵³ *Id.*



In the case of *Nava vs. Commissioner of Internal Revenue*,⁵⁴ the Supreme Court stressed the importance of proving the release, mailing or sending the assessment notice. It declared:

“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 officers, without adequate protection or defense. (*Emphasis supplied*).”

In addition to the foregoing jurisprudential pronouncement, due process requires that the notice of assessment be served on and received by the taxpayer.⁵⁵

It appearing in this case that the person (herein petitioner) liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory.⁵⁶

Thus, for failure of respondent to establish that Formal Assessment Notice No. IT-17316-99-03-282 had been released, mailed or sent within the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, the right of the Government to assess the subject tax has prescribed.

More particularly, the assailed Formal Assessment Notice could not have produced the legal effect of making petitioner a delinquent income taxpayer for taxable year 1999. There is, therefore, no delinquency income tax to speak of to justify the collection of any income tax delinquency from

⁵⁴ G.R. No. L-19470, January 30, 1965.

⁵⁵ *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.

⁵⁶ *Republic of the Philippines vs. De la Rama, et al.*, G.R. No. L21108, November 29, 1966.



petitioner for such taxable year, through the issuance of a warrant of distraint and/or levy.

With the foregoing findings, it is no longer necessary to dwell on the other issues stipulated by the parties.

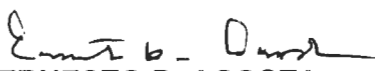
WHEREFORE, the deficiency income tax assessment in the amount of ₱ 1,480,099.29, inclusive of interest, for taxable year 1999, covered by Formal Assessment Notice No. IT-17316-99-03-282 and the Warrant of Distraint and/or Levy dated November 27, 2003, both issued against petitioner by respondent, are hereby **CANCELLED** and **WITHDRAWN**.

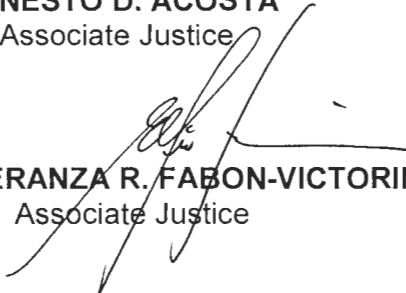
Accordingly, respondent is hereby **ORDERED** to cease and desist from implementing the said assessment and Warrant.

SO ORDERED.


ERLINDA P. UY
Associate Justice

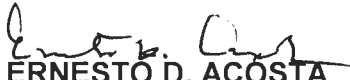
WE CONCUR:


ERNESTO D. ACOSTA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division