REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

XYLEM WATER SYSTEMS INTERNATIONAL, INC. (formerly GOULDS PUMPS [N.Y.], INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8901

Members:
FABON-VICTORINO, ***and***
RINGPIS-LIBAN, ***JJ.***

Promulgated:
JAN 31 2019
1:34 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

Before this Court is a Petition for Review filed by Xylem Water Systems International, Inc. (formerly Goulds Pumps [N.Y.], Inc.) on October 03, 2014 to appeal the following alleged deficiency tax assessments for taxable year 2004: (a) expanded withholding tax ("EWT") in the total amount of Php1,370,725.90; (b) final withholding tax ("FWT") in the total amount of Php41,261,378.35; and (c) fringe benefit tax ("FBT") in the total amount of Php1,391,660.67.

The Petition for Review also seeks the quashal of, and the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction against the issued Warrant of Distraint and/or Levy ("WDL") dated September 09, 2014 and the suspension of the collection of the alleged deficiency taxes against it.

The Facts

Petitioner Xylem Water Systems International, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, U.S.A. It is authorized to transact business in the Philippines as a branch office primarily to engage in the manufacture, assembly, repair and maintenance of various pumps and related products.[1] Petitioner is also registered with the Bureau of Internal Revenue ("BIR"), with Taxpayer Identification No. 246-534-865-000.[2]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On October 10, 2005, Petitioner received from Revenue Region No. 9 – San Pablo City a Letter of Authority ("LOA") No. 0009816815 dated September 15, 2005. The LOA authorized the examination of the books of accounts and other accounting records of Petitioner for taxable year 2004.[3]

On June 05, 2007, Petitioner received from Revenue District Office ("RDO") No. 56 a Preliminary Notice dated June 04, 2007 ("Preliminary Notice"). The Preliminary Notice assessed Petitioner of deficiency value-added ("VAT") and the alleged deficiency EWT, FWT, and FBT for taxable year 2004.[4]

On June 07, 2007, Petitioner wrote a Letter to RDO No. 56, acknowledging the receipt of the Preliminary Notice and requesting for an additional period of fifteen (15) to sixty (60) days from the BIR's receipt of the letter within which to submit documentary evidence.[5]

On January 09, 2008, Petitioner filed with Revenue Region No. 9 its reply to the Preliminary Notice. It attached to the reply its Position Paper dated June 25, 2007 and supporting documents.[6]

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[1] Docket, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, Par. 1, p. 598.
[2] *Id.*, JSFI, Admitted Facts, Par. 2, p. 598.
[3] *Id.*, JSFI, Admitted Facts, Par. 4, p. 599.
[4] *Id.*, JSFI, Admitted Facts, Par. 5, p. 599.
[5] *Id.*, JSFI, Admitted Facts, Par. 6, p. 599.
[6] *Id.*, JSFI, Admitted Facts, Par. 7, p. 599.

On March 6, 2008, Petitioner availed of the Tax Amnesty Program under Republic Act ("R.A.") No. 9480, which covers taxable year 2005 and prior years.[7]

On March 14, 2008, Petitioner received a Tax Verification Notice ("TVN") No. 00215534 dated March 12, 2008 from Revenue Region No. 9. The said TVN authorized the verification of the supporting documents and records of Petitioner pursuant to its request for reinvestigation.[8]

On January 08, 2009, Petitioner received a Letter dated December 11, 2008 from RDO No. 56, authorizing a new set of revenue officers to conduct the examination of the books of accounts and other accounting records of Petitioner.[9]

On January 06, 2011, Petitioner received another Letter from RDO No. 56 dated December 21, 2010, informing Petitioner that the case will be forwarded to Revenue Region No. 9 for further review, issuance of the statutory assessment, and enforcement of collection.[10]

On February 21, 2013, Petitioner received the Preliminary Collection Letter ("PCL") from RDO No. 56 which sought to collect the VAT and the alleged deficiency taxes under Assessment No. 56-2004, in the total amount of Php44,991,188.88, broken down as follows:[11]

KIND OF TAX	BASIC TAX	INTEREST	COMPROMISE PENALTY	TOTAL
VAT	Php592,881.07	Php354,542.88	Php20,000.00	Php 967,423.95
EWT	842,098.44	508,627.46	20,000.00	1,370,725.90
FWT	24,735,321.74	16,501,056.61	25,000.00	41,261,378.35
FBT	854,085.10	517,575.57	20,000.00	1,391,660.67
TOTAL	Php27,024,386.35	Php17,881,802.52	Php85,000.00	**Php44,991,188.87**

On March 22, 2013 Petitioner filed its protest of the Preliminary Collection Letter together with supporting documents with RDO No. 56 ("First Protest").[12]

On June 24, 2013, Petitioner filed with RDO No. 56 a supplement to the First Protest ("Supplement to First Protest").[13]

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7 *Id.*, JSFI, Admitted Facts, Par. 18, p. 600.
8 *Id.*, JSFI, Admitted Facts, Par. 8, p. 599.
9 *Id.*, JSFI, Admitted Facts, Par. 9, p. 599.
10 *Id.*, JSFI, Admitted Facts, Par. 10, p. 599.
11 *Id.*, JSFI, Admitted Facts, Par. 11, p. 599.
12 *Id.*, JSFI, Admitted Facts, Par. 12, p. 600.
13 *Id.*, JSFI, Admitted Facts, Par. 13, p. 600.

Petitioner received the reply of RDO No. 56 dated July 02, 2013 to Petitioner's March 22, 2013 First Protest.[14]

On July 28, 2014, Petitioner received a Final Notice Before Seizure ("FNBS") from RDO No. 56. The FNBS gave Petitioner fifteen (15) days from receipt thereof to settle the alleged deficiency taxes as provided in Respondent's PCL.[15]

On August 08, 2014, Petitioner filed with RDO No. 56 its protest to the FNBS ("Second Protest").[16]

On September 09, 2014, Petitioner received the WDL from RDO No. 56, signed by Revenue District Officer Honorata S. Aguilar, for the collection of the alleged deficiency taxes, as follows: (a) EWT in the total amount of Php1,370,725.90; (b) FWT in the total amount of Php41,261,378.35; and (c) FBT in the total amount of Php1,391,660.67.[17]

On October 03, 2014, Petitioner filed with the Court its Petition for Review with (a) Urgent Motion to Quash the Warrant of Distraint and/or Levy and (b) Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.[18]

On October 13[19] and 15[20], 2014, Petitioner's witness and Financial Controller, Adelfa Lubong, testified in support of Petitioner's Motion for Suspension of Collection of Tax.

On October 16, 2014, Petitioner filed its Formal Offer of Evidence.[21]

On November 24, 2014, the Court granted Petitioner's Urgent Motion to Quash the Warrant of Distraint and/or Levy and Application for TRO and/or Writ of Preliminary Injunction, provided that Petitioner must file within ten (10) days from receipt of the Resolution, a surety bond equivalent to not more than double the amount sought to be collected by Respondent.[22] Respondent also

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14 *Id.*, JSFI, Admitted Facts, Par. 14, Admitted Facts, p. 600.
15 *Id.*, JSFI, Admitted Facts, Par. 15, p. 600.
16 *Id.*, JSFI, Admitted Facts, Par. 16, p. 600.
17 *Id.*, JSFI, Admitted Facts, Par. 17, p. 600.
18 *Id.*, pp. 1-34.
19 *Id.*, Resolution dated October 16, 2014, pp. 350-351.
20 *Id.*, Resolution dated October 21, 2014, pp. 354-355.
21 *Id.*, pp. 284-291.
22 *Id.*, Resolution dated November 24, 2014, pp. 374-377.

filed on November 24, 2014 his Answer[23] to the Petition for Review dated October 03, 2014.

On December 05, 2014, Petitioner filed its Reply (To Respondent's Answer to the Petition for Review dated 3 October 2014)[24].

On December 22, 2014, Petitioner filed its Motion for Correction (Re Resolution dated 24 November 2014) with Motion to Defer Posting of Surety Bond[25].

On April 07, 2015, the pre-trial conference was held.[26] On April 21, 2015, the parties filed their Joint Stipulation of Facts and Issues[27]. On May 20, 2015, the Court issued its Pre-Trial Order[28].

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

On May 25, 2015, the Court granted the motion to commission Ms. Mary Ann C. Capuchino as the Independent Certified Public Accountant ("ICPA") for the case.[29]

On June 24, 2015, Petitioner filed its ICPA's report. On July 15, 2015, Petitioner filed the Sworn Statement of Ms. Capuchino.[30]

On August 07, 2015, the Court approved the surety bond posted by Petitioner and enjoined Respondent from collecting or attempting to collect on the basis of the subject assessment notices until further orders from the Court.[31]

On September 09, 2015, Petitioner filed the Supplemental Sworn Statement of Ms. Adelfa Lubong, Petitioner's Financial Controller.[32] On September 14, 2015, Ms. Capuchino and Ms. Lubong appeared in open court.[33] Ms. Capuchino identified her judicial affidavit and ICPA Report, while Ms. Lubong identified her Supplemental Sworn Statement.

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[23] *Id.*, pp. 378-393.
[24] *Id.*, pp. 403-408.
[25] *Id.*, pp. 409-414.
[26] *Id.*, Minutes of Hearing dated April 07, 2015, p. 590.
[27] *Id.*, pp. 598-611.
[28] *Id.*, pp. 629-640.
[29] *Id.*, Minutes of Hearing dated May 25, 2015, p. 641.
[30] *Id.*, pp. 843-891.
[31] *Id.*, Resolution dated August 07, 2015, pp. 894-895.
[32] *Id.*, pp. 928-936.
[33] *Id.*, Minutes of Hearing dated September 14, 2015, p. 937.

On October 14, 2015, Petitioner filed its Formal Offer of Evidence.[34] On October 28, 2015, Respondent filed its Comment (Re: Petitioner's Formal Offer of Evidence).[35] On December 18, 2015, the Court admitted all of Petitioner's exhibits, except for Exhibit "P-49" for failure of the exhibit to correspond with the document marked.[36]

On February 12, 2016, Petitioner filed an Urgent Omnibus Motion,[37] which among others, requested that the Supplemental Sworn Statement of Ms. Capuchino be admitted. On March 30, 2016, the Court granted the motion.[38]

On July 13, 2016, Petitioner filed a Motion to Lift or Reduce Bond[39]. On August 31, 2016, the Court denied the motion.[40]

On July 25, 2016, the ICPA was recalled to the witness stand to identify her Supplemental Sworn Statement.[41] On July 27, 2016, Petitioner filed its Supplemental Formal Offer of Evidence[42] dated July 26, 2016.

On January 25, 2017, the Court admitted Petitioner's Exhibit "P-49-1".[43]

On April 24, 2017, Respondent presented its witnesses, namely, Revenue Officers Rozenn Novilla, Arlene Tenorio, and Dolores Zaporteza.[44]

On May 09, 2017, Respondent filed its Formal Offer of Evidence.[45] On May 29, 2017, Petitioner filed its Comment to Respondent's Formal Offer of Evidence[46]. Thereafter, the Court admitted Respondent's evidence on July 14, 2017.[47]

On July 18, 2017, Petitioner presented rebuttal witness Mary Antonette S. Parfan, Postmaster of the Post Office of Southern Luzon Area 4, San Pablo City after the Court granted on July 05, 2017 Petitioner's Motion for Issuance of

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34 *Id.*, pp. 948-967.
35 *Id.*, pp. 1059-1061.
36 *Id.*, Resolution dated December 18, 2015, pp. 1064-1065.
37 *Id.*, pp. 1066-1074.
38 *Id.*, Resolution dated March 30, 2016, pp. 1089-1090.
39 *Id.*, pp. 1108-1112.
40 *Id.*, pp. 1142-1144.
41 *Id.*, Minutes of Hearing dated July 25, 2016, p. 1116.
42 *Id.*, pp. 1131-1133.
43 *Id.*, p. 1157.
44 *Id.*, Minutes of Hearing dated April 24, 2017, p. 1159.
45 *Id.*, pp. 1162-1168.
46 *Id.*, pp. 1182-1187.
47 *Id.*, Resolution dated July 14, 2017, p. 1208.

Subpoena Ad Testificandum and Subpena Duces Tecum[48] filed on June 21, 2017 to require Ms. Parfan to attend the hearing on even date.[49] On July 21, 2017, Petitioner filed its Supplemental Formal Offer of Evidence[50]. On July 28, 2017, Respondent filed its Comment to Petitioner's Supplemental Formal Offer of Evidence.[51]

On November 27, 2017, the Court admitted Petitioner's Exhibits "P-86", "P-87", and "P-87-a" and gave the parties thirty (30) days from receipt of notice to submit their memoranda.[52]

On January 03, 2018, Petitioner filed a Motion for Extension to File Memorandum[53] and requested an additional period of fifteen (15) days from January 03, 2018 or until January 18, 2018, within which to file its Memorandum.

On January 05, 2018, Respondent filed a Motion for Leave to Admit Attached Memorandum with Attached Memorandum[54].

On January 09, 2018, the Court granted Petitioner fifteen (15) days or until January 18, 2018 within which to file its Memorandum.[55]

On January 16, 2018, the Court required Petitioner to comment on Respondent's Motion within ten (10) days from notice.[56]

Petitioner filed its Memorandum[57] on January 18, 2018.

On February 05, 2018, the Judicial Records Division of this Court issued a Records Verification Report[58] stating that Petitioner failed to file its Comment on Respondent's Motion for Leave to Admit Attached Memorandum with Attached Memorandum.

On February 20, 2018, the Court deemed the case submitted for decision after granting Respondent's Motion to Admit Attached Memorandum with

48 *Id.*, pp. 1189-1192.
49 *Id.*, Minutes of Hearing dated July 18, 2017, p. 1210.
50 *Id.*, pp. 1213-1217.
51 *Id.*, pp. 1218-1221.
52 *Id.*, Resolution dated November 27, 2017, pp. 1224-1225.
53 *Id.*, pp. 1226-1228.
54 *Id.*, pp. 1231-1247.
55 *Id.*, Resolution dated January 9, 2018, p. 1249.
56 *Id.*, Resolution dated January 16, 2018, p. 1251.
57 *Id.*, pp. 1252-1280.
58 *Id.*, p. 1282.

Attached Memorandum and admitting Respondent's Memorandum as part of the records of this case.[59]

The Issues

The parties submitted the following issues for this Court's disposition:[60]

1. Whether the Court has jurisdiction over the Petition.

2. Whether Petitioner is liable to pay the total amount of Php44,023,764.92 as EWT, FWT, and FBT including interest and compromise penalties for taxable year ending December 31, 2004.

    a. Whether the deficiency EWT assessment has legal and factual bases.

    b. Whether the deficiency FWT assessment has legal and factual bases.

    c. Whether the deficiency FBT assessment has legal and factual bases.

3. Whether Respondent's Assessment Notice No. 56-2004 dated January 22, 2008 ("FAN and FLD") for alleged deficiency taxes for taxable year 2004 was issued beyond the three-year prescriptive period under Section 203 of the Tax Code.

4. Whether Respondent's WDL dated September 09, 2014 has legal and factual bases.

5. Whether the implementation of the WDL and the collection of the deficiency taxes violate Petitioner's right to procedural due process.

6. Whether the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue

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[59] *Id.*, Resolution dated February 20, 2018, pp. 1284-1285.
[60] *Id.*, JSFI, Issues, pp. 601-602.

Code ("Waiver") executed by Bernardo M. Isaac strictly complied with the Revenue Memorandum Order No. 20-90.

a. Whether Mr. Bernardo M. Isaac was properly authorized by Petitioner's Board of Directors to execute the Waiver.

b. Whether the date of acceptance by Respondent was indicated in the Waiver executed by Mr. Isaac.

Petitioner's Arguments[61]

Petitioner maintains that the failure of Respondent to properly notify Petitioner of the FAN constitutes a clear violation of Petitioner's fundamental right to due process. Accordingly, the FAN is invalid against Petitioner and should not be enforced.

Petitioner submits that Respondent's right to assess Petitioner's taxes for taxable year 2004 has prescribed. According to Petitioner, long after the prescription of Respondent's right to assess deficiency taxes for 2004, no FAN had yet been issued to Petitioner.

Petitioner asserts that the assessments for deficiency EWT, FWT, and FBT have no legal and factual bases. Petitioner likewise contends that the enforcement of the assessment for deficiency taxes through the WDL constitutes a material and substantial invasion of Petitioner's clear and unmistakable rights.

Respondent's Counter-arguments[62]

Respondent maintains that the Court has no jurisdiction over the instant Petition because the assessment has already become final, executory and demandable.

Respondent asserts that the FAN and the FLD were validly and lawfully issued within the period allowed by law. Consequently, the FAN and the FLD never lost their validity.

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[61] *Id.*, pp. 9-31.
[62] *Id.*, pp. 379-390.

Respondent further claims that the Letter of Authority, Notice of Informal Conference, Preliminary Notice, FAN, and FLD were issued in accordance with law and jurisprudence.

Discussion/Ruling

The Court has jurisdiction over the present case

There is no dispute that the Court has appellate jurisdiction over other cases arising under the NIRC of 1997, as amended, or related laws administered by the BIR pursuant to Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, the pertinent provision of which states:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*

What is disputed in this case is the timeliness of the filing of the case with the Court.

Respondent argues that the Court has no jurisdiction over the instant petition for failure of Petitioner to file the appeal within the mandatory 30-day period from January 06, 2011, which is the date of receipt by Petitioner of the letter dated December 21, 2010 issued by Revenue District Officer Benito B. Wong, denying Petitioner's protest on the assessment dated January 22, 2008. Respondent alleges that Petitioner had until February 05, 2011 to appeal such denial to the Court. Respondent also alleges that Petitioner's contention that the instant petition filed on October 03, 2014 is within the jurisdiction of the Court because Petitioner received a copy of the WDL on September 9, 2014 is misplaced.

Petitioner argues that the Court has jurisdiction over the instant petition because Petitioner was not properly notified of Respondent's FAN. Petitioner asserts that although the FAN was supposedly dated January 22, 2008, Petitioner became aware thereof only on February 21, 2013 after it received a Preliminary Collection Letter from Respondent making reference to the FAN. Petitioner alleges that it requested for a copy of the said FAN on March 04, 2013 and received said copy only on March 11, 2013. Petitioner contends that accordingly, Respondent cannot argue that the December 21, 2010 Letter of Revenue District Officer Wong denied Petitioner's protest when in the first place, there is no valid assessment to speak of.

Respondent's contentions lack merit.

Time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, the Court declares that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[63]

Pertinent to this is Section 11 of R.A. No. 1125, as amended, which states:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
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> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. A Division of the CTA shall hear the appeal: xxx" (*Emphasis supplied*)

[63] China Banking Corp. v. City Treasurer of Manila, G.R. No. 204117, July 01, 2015.

Based on the foregoing provision, a person adversely affected by a decision of the Commisioner of Internal Revenue has thirty (30) days within which to file a petition for review with the Court.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[64], the Supreme Court reckoned the 30-day period to file an appeal before this Court from receipt of the WDL. The High Court held that the WDL constitutes an act of the Commisioner of Internal Revenue on "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the Bureau of Internal Revenue, which may be the subject of an appropriate appeal before this Court.

Applying the foregoing, the receipt of the WDL by Petitioner on September 09, 2014 must be the reckoning period for its 30-day period to file a Petition for Review before the Court. The filing of the Petition for Review with an urgent motion to quash the WDL and an application for temporary restraining order and/or writ of preliminary injunction on October 03, 2014 with this Court is within the 30-day period to file an appeal from September 09, 2014. Therefore, the Petition for Review is timely filed with the Court.

For violating Petitioner's right to due process, the subject assessment is void

As there is an allegation that the FAN was not received by Petitioner prior to March 11, 2013, the Court deems it proper to resolve this before delving into the other matters.

Petitioner states that it did not receive the FAN covering the alleged deficiency taxes for taxable year 2004, in violation of the due process requirements of Section 228 of the NIRC of 1997, as amended, thus, the FAN is invalid as against Petitioner and should not be enforced. Petitioner also states that in case of a denial of receipt of the alleged FAN, the burden to prove such was issued and received by the taxpayer shifts to Respondent.

On the other hand, Respondent alleges that he duly issued the FAN and the FLD. In support, Respondent cites a Letter dated February 28, 2008 from Revenue Region No. 9 informing Petitioner that the FAN dated January 22, 2008 has already been sent to Petitioner.[65] Thus, Respondent states that Petitioner was duly informed of the issuance of the FAN and the FLD.

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[64] G.R. No. 162852, December 16, 2004.
[65] BIR REcords, Exhibit "R-14", p. 286.

A certified photocopy of the registry return receipt indicating that the FAN and the FLD were received by Petitioner on February 05, 2008 was also produced. Respondent asserts that considering that the FAN was duly issued and mailed, it should be considered valid.

The Court is not persuaded with the explanation of Respondent.

In the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[66], the Supreme Court held:

> "In its Decision, the CTA resolved the issues raised by the parties thus:
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>> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to Respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals, 149 SCRA 351*). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
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>> xxx xxx xxx
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>> xxx 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. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any

[66] G.R. No. 157064, August 07, 2006.

> other pertinent document which is executed with the intervention of the Bureau of Posts. xxx
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> In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail 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 this 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, 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."

In the above-quoted *Barcelon* case, the Supreme Court emphasized the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice, which was timely released, mailed and sent. Thus, the presumption of regularity in the ordinary course of mail is merely disputable, and when the taxpayer-addressee denies the receipt of the disputed assessment – delivered and served through registered mail – issued by Respondent against the taxpayer-addressee, the burden of proof is now shifted to Respondent to present and offer evidence to prove that the same was duly delivered and indeed received by the taxpayer-addressee.

Moreover, when service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the *registry receipt issued by the mailing office* and *an affidavit of the person mailing* of facts showing compliance with Section 13 of Rule 13 of the 1997 Rules on Civil Procedure.[67] Absent one or the other, or worse both, there is no proof of service.[68] The original copies of the registry receipt or, in lieu thereof, the unclaimed notice and a certification from the postmaster of the issuance of notice, should be presented.

In the present case, as proof that Petitioner was served with and actually received copies of the FAN and the FLD, Respondent presented a certified photocopy of the registry return receipt. Notably, no affidavit of the person mailing the same was presented by Respondent. Receipts for registered letters

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[67] Republic of the Philippines v. Resins, Incorporated, G.R. No. 175891, January 12, 2011.
[68] The Government of the Philippines v. Victoriano Aballe, et al.; Republic of the Phils. v. Salvador Wee, G.R. No. 147212, March 24, 2006.

and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.[69] Respondent also failed to present a certification of the postmaster that the notice was duly issued and delivered to Petitioner such that service by registered mail may be deemed completed.[70]

Perusal of the records and of the registry return receipt shows that the signature therein is unidentified and unauthenticated. It was not established whether such signature indeed belongs to Petitioner's authorized representative. Stated otherwise, the identity and authority of the person whose signature appears on the registry return receipt were not established.

The Court has been consistent in its ruling that the registry return card must be authenticated to serve as proof of receipt of letters sent through registered mail. To be sure, the presentation of the registry card with an unauthenticated signature is not equivalent to proof that a letter sent through registered mail was actually received by the addressee.[71]

In *Ting, et al. vs. Court of Appeals, et al.*[72], the Supreme Court held:

> "xxx Given Petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by Petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by Petitioners. 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.
>
> Likewise, 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. In the case at bar, no effort was made to show that the demand letter was received by

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69 The Government of the Philippines v. Victoriano Aballe, et al.; Republic of the Phils. v. Salvador Wee, G.R. No. 147212, March 24, 2006.

70 In the Matter of the Petition for Habeas Corpus of Benjamin Vergara, et al. v. Hon. Francisco C. Gedorio, Jr., et al., G.R. No. 154037, April 30, 2003.

71 Jesusa T. Dela Cruz v. People of the Philippines, G.R. No. 163494, August 03, 2016.

72 G.R. No. 140665, November 13, 2000.

Petitioners or their agent. **All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the Petitioners or of their authorized agent remains a mystery.** xxx" (*Emphasis supplied*)

In addition, Mary Antonette Parfan, the Postmaster of the Post Office of Southern Luzon Area 4, San Pablo City testified on redirect examination on July 18, 2017 regarding the delivery of the FAN and/or FLD:[73]

"ATTY. NER

Q So, you answered, Ms. Witness, that you saw the original Registry Return Card but in your Judicial Affidavit you stated that I cannot remember if this return card was one of the originals that he previously shown to you. So can you...

ATTY. VICENTE

Your Honors, the question has already been answered by the witness that she saw the original.

JUSTICE LIBAN

Just let him ask the question first.

ATTY. NER

Q So, can you please reconcile this conflict in your statement because in your Sworn Statement, you mentioned that you cannot remember if this one is the original. Can you explain?

MS. PARFAN

A During that time, Darius has many return cards with him and he said...

JUSTICE VICTORINO

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[73] TSN dated July 18, 2017, pp. 10-11.

Which time are you referring to?

MS. PARFAN

A Prior to the certifying of the return card, the photocopy of the return card. Then, he told me that he needs a Certification of the return cards, I said that **we were not the one who delivered the mail** so what I can only do is to Certified True Copy the photocopy of the return card. By that time, he had lots of return cards with him then he had it photocopied then when he returned, I was asked to sign for the Certification and that's how I signed the Certified True Copy." (*Emphasis supplied*)

Thus, Respondent failed to prove that the FAN and FLD was actually delivered to Petitioner absent a certification from the Postmaster to that effect and an affidavit of the person who mailed the FAN and FLD. As such, the certified photocopy of the return card was not properly authenticated in order to serve as proof of receipt by Petitioner of the FAN and FLD.

Clearly, Respondent failed to prove that Assessment Notice No. 56-2004 dated January 22, 2008 had been actually served and received by Petitioner or its duly authorized agent. Failure of Respondent to prove receipt of the assessment by Petitioner leads to the conclusion that no assessment was issued. Thus, in the absence of a valid service of the questioned FAN dated January 22, 2008, 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. A void assessment bears no valid fruit.[74] There being no valid assessment, the corresponding WDL issued against Petitioner is also void.

Considering the declaration of the Court that the issued assessment is invalid, the other stipulated issues will no longer be discussed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and the Final Assessment Notice No. 56-2004 dated January 22, 2008, assessing Petitioner for alleged deficiency EWT, FWT, and FBT for taxable year 2004, in the total amount of Php44,023,764.92, as well as the Warrant of Distraint and/or Levy dated September 09, 2014 are hereby **CANCELLED**.

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[74] Samar-I Electric Cooperative v. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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