REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FIRST FAR EAST DEVELOPMENT CORPORATION, Petitioner,	CTA CASE NO. 9678
	Members:
-versus-	DEL ROSARIO, P.J., Chairperson, FABON-VICTORINO, and MANAHAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 04 2020 9:53 a.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review filed on September 5, 2017, petitioner First Far East Development Corporation prays to set aside the Decision dated August 9, 2017 rendered by respondent Commissioner of Internal Revenue (CIR) denying its protest against the latter's 1990 tax assessments for deficiency income tax (IT), expanded withholding tax (EWT), and value-added tax (VAT), in the aggregate amount of ₱24,357,722.32, on ground of prescription.[1]

Petitioner is a domestic corporation[2] registered with the Bureau of Internal Revenue (BIR), with business address at BPI Building, 6768 Ayala Avenue corner Paseo de Roxas, Makati City 1226 as shown in its Certificate of Registration No. 9RC0000310751, issued by Revenue District Office No. 47, Makati City.[3]

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[1] Statement of the Case, Pre-Trial Order dated May 29, 2018, Docket, p. 154.
[2] Par. 5, Additional Facts Stipulated, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 130.
[3] Par. 6, Additional Facts Stipulated, JSFI, Docket, p. 130.

Respondent, on the other hand, is a public officer with authority under the National Internal Revenue Code (NIRC) of 1997, as amended to examine taxpayer's tax liabilities, issue tax assessments, and evaluate and decide protests relative thereto. He may be served with summons and other court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On March 6, 1992, respondent issued against petitioner Letters of Authority Nos. 0001567 and 0001568 for the purpose of investigating the latter's 1990 internal revenue taxes.[5]

As a result of such investigation, petitioner received from respondent a Preliminary Assessment Notice (PAN).[6]

Thereafter, respondent issued the Demand Letter dated May 20, 1993, with attached details of computation, together with Assessment Notice Nos.: (1) FAS 2-90-93-002290 for deficiency IT in the amount of ₱20,461,695.08; (2) FAS 2-90-93-002291 for EWT in the amount of ₱12,361.54; and (3) FAS 2-90-93-002292 VAT in the amount of ₱3,883,665.70 or a total of ₱24,357,722.32.[7] These Assessment Notices were received by petitioner on May 25, 1993.[8]

On June 21, 1993, petitioner filed a letter-protest against the said tax assessments, with a request for reinvestigation. It was followed by another protest on December 3, 1993.[9]

On October 9, 2007, petitioner filed a supplemental protest dated October 5, 2007, praying for the cancellation of the 1990 tax assessments on ground of prescription.[10]

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[4] Par. 1, Summary of Admitted Facts, JSFI, Docket, p. 130.
[5] Par. 7, Additional Facts Stipulated, JSFI, Docket, p. 131.
[6] Par. 8, Additional Facts Stipulated, JSFI, Docket, p. 131.
[7] Par. 9, Additional Facts Stipulated, JSFI, Docket, p. 131.
[8] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 130.
[9] Par. 3, Summary of Admitted Facts, and Par. 10, Additional Facts Stipulated, JSFI, Docket, pp. 130 and 131, respectively.
[10] Par. 11, Additional Facts Stipulated, JSFI, Docket, p. 131.

On August 17, 2017, petitioner received respondent's Decision dated August 9, 2017 denying its protest.[11]

Hence, the instant Petition for Review filed by petitioner on September 5, 2017.[12]

In his Answer[13] filed on December 13, 2017, respondent counters that petitioner failed to allege any ground to dispute the audit findings for deficiency taxes. Its discussion focused on whether his request for reinvestigation was granted and whether his right to collect the subject deficiency taxes for taxable year (TY) 1990 has prescribed. By so doing, petitioner impliedly admitted the factual and legal bases of the subject deficiency tax assessments.

Contrary to petitioner's contention, his right to collect deficiency taxes from it has not yet prescribed. Respondent points out that petitioner filed a request for reinvestigation on June 21, 1993 after it received the assessment notice on 25 May 1993. Such filing of a request for reinvestigation, according to respondent, prevented the running of the period for collection of taxes pursuant to Section 203 of the NIRC, as amended, considering that such request for reinvestigation was granted though a Notice of Hearing dated April 5, 1994 sent to petitioner.

The parties submitted their Joint Stipulation of Facts and Issues on May 7, 2018,[14] on the basis of which the Court issued a Pre-Trial Order[15] on May 29, 2018.

During the trial, petitioner presented its lone witness, **Feliciana S. Cruz**,[16] the Assistant Vice President for Unibank Central Accounting Division of the Bank of the Philippine Islands, tasked to monitor and supervise the financial transactions and accounting records of wholly-

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[11] Par. 4, Summary of Admitted Facts, and Par. 12, Additional Facts Stipulated, JSFI, Docket, p. 131.
[12] Par. 13, Additional Facts Stipulated, JSFI, Docket, p. 131; *Petition for Review*, Docket, pp. 10 to 18.
[13] Docket, pp. 61 to 67.
[14] Docket, pp. 130 to 133.
[15] Docket, pp. 154 to 160.
[16] Exhibit "P-9", Docket, pp. 83 to 87; Order dated May 29, 2018, Docket, pp. 149 to 150.

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owned subsidiaries of BPI which are deemed inactive with only one or two transactions in a given year, as obtaining in the case of petitioner.

She has in her custody petitioner's accounting and tax-related records, like its Certificate of Registration with the BIR. Also in her custody are the Demand Letter dated May 20, 1993 with attached details of computation, the Assessment Notices for deficiency IT, EWT, and for VAT, all dated May 20, 1993 sent to petitioner, its Protest Letter filed on June 21, 1993 with request for reinvestigation, Protest Letter dated December 3, 1993, and the BIR Decision dated August 9, 2017. However, nothing in the enumerated documents indicates that respondent ever acted on petitioner's protest, prompting petitioner to file the instant case.

In the Resolution dated August 3, 2018[17], which resolved petitioner's Formal Offer of Evidence[18], the Court admitted petitioner's Exhibits, except Exhibits "P-2", "P-3", "P-4", and "P-5", which were mere photocopies.

For his defense, respondent presented as his lone witness, **Attorney Ariel Crispin D. Ante**,[19] an action lawyer of the BIR's Appellate Division from 1996 to 2015.

He testified that he conducts hearings, evaluates and resolves protests or requests for reinvestigation or reconsideration on deficiency tax assessments of taxpayers, such as that of petitioner. Based on the record, a Notice of Hearing was issued and sent to petitioner on April 5, 1994, *via* registered mail. Nevertheless, he could not ascertain if it was actually received by petitioner as neither a Registry Receipt, nor Return Card nor a Certification from the Postmaster could be found in the BIR Record of the case. The witness hastened to add however that it is the General Services Division (GSD) of the BIR that is tasked to send notices through registered mail. In the instant case, his only

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[17] Docket, pp. 200 to 201.
[18] Docket, pp. 176 to 177.
[19] Exhibit "R-4", Docket, pp. 166 to 171; Order dated November 6, 2018, Docket, pp. 214 to 215.

proof of mailing of the Notice of Hearing is a photocopy of a page of the GSD logbook indicating the mailed matter.

It does not also appear in the record of the case if a hearing was ever conducted pursuant to the Notice of Hearing, or if petitioner and the investigating revenue officer ever attended the same. There is however an unsigned recommendation to cancel the assessment on ground of prescription which is in the BIR record for documentation purposes only. Contrary to the said recommendation, a Decision dated August 9, 2017 was issued affirming the assessments issued against petitioner.

In the Resolution dated January 11, 2019,[20] respondent rested upon admission of his offered Exhibits[21].

After the parties filed their respective memoranda, the case was submitted for decision on March 14, 2019.[22]

THE ISSUES RAISED

The parties submitted the following issues for this Court's resolution, [23] to wit:

> A. Whether respondent's right to collect the deficiency income tax, expanded withholding tax and value-added tax (VAT) for 1990 in the aggregate amount of Twenty Four Million Three Hundred Fifty Seven Thousand Seven Hundred Twenty Two and 32/100 (P24,357,722.32) has prescribed.
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> B. Whether petitioner is liable to pay the 1990 deficiency taxes.

Petitioner's arguments:

Petitioner claims that it did not receive the alleged Notice of Hearing sent by respondent which could prove that

[20] Docket, pp. 237 to 238.
[21] Docket, pp. 221 to 225.
[22] Resolution dated March 14, 2019, Docket, p. 265.
[23] Docket, p. 156.

its request for reinvestigation was given due course. Admittedly, there is nothing in the BIR record showing the mailing and receipt of such Notice of Hearing. Respondent failed to present the registry receipt or post office registry return card to show receipt of such notice.

In the absence of any indication that respondent gave due course to its request for reinvestigation, the prescriptive period for purposes of collection of taxes was not suspended, thus, the subject assessments have already prescribed.

Finally, the 1990 deficiency income tax assessment has no legal and factual bases as it was based on petitioner's 1989 transactions, hence, should be cancelled.

Respondent's counter-arguments:

Respondent argues that the Notice of Hearing dated April 5, 1994 signified that he granted petitioner's request for reinvestigation for it was sent to petitioner so it could present documents in support of its protest and cross-examine the investigating examiner during the scheduled hearing. That being the case, his right to collect the subject deficiency taxes has not yet prescribed.

THE RULING OF THE COURT

The pertinent provisions in the resolution of the instant case are Sections 203, 223, and 224 of the NIRC of 1986, as amended by Presidential Decree No. 1994, which provide as follows:

> SEC. 203. Period of limitation upon assessment and collection. — Except as provided in the succeeding section, **internal revenue taxes shall be assessed within three years after the return was filed**, 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-year period shall

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be counted from the day the return was filed. For the 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.[24]

SEC. 223. Exceptions as to a period of limitation of assessment and collection of taxes. — xxx

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(c) **Any internal revenue tax which has been assessed within the period of limitation above prescribed, may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.**

xxx xxx xxx.[25]

SEC. 224. Suspension of running of statute. — **The running of the statute of limitations provided in Sections 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect or any deficiency, shall be suspended** for the period during which the Commissioner of Internal Revenue is prohibited from making the assessment of beginning distraint or levy or a proceeding in court and for sixty days thereafter; **when the taxpayer requests for a re-investigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That if the taxpayer informs the Commissioner of any change in address, the statute will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.[26]

Clear from the foregoing provisions that the BIR has three (3) years, counted from the actual filing of the return or from the last date prescribed by law for the filing of such

[24] Now, Section 203 of the NIRC of 1997.
[25] Now, Section 222 of the NIRC of 1997.
[26] Now, Section 223 of the NIRC of 1997.

return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment. Following the assessment of the tax, the BIR has another three (3) years to collect by distraint or levy or by a proceeding in court.

In any event, the running of the three (3)-year period to collect shall be suspended when, inter alia, the taxpayer requests for a reinvestigation and respondent grants the same. In other words, two (2) requisites must concur before the period to enforce collection may be suspended: namely; (a) that the taxpayer requests for reinvestigation; and (b) that respondent grants such request.[27]

It must be noted, however, that the burden of proof that the taxpayer's request for reinvestigation had been actually granted, rests upon respondent. The grant may be expressed in communications with the taxpayer or implied from the actions of the respondent or his authorized BIR representatives in response to the request for reinvestigation.[28]

The record shows that petitioner filed its letter-protest on June 21, 1993, assailing the subject tax assessments with an express request for reinvestigation. It was followed by another protest filed on December 3, 1993.[29]

Respondent insists that he granted such request for reinvestigation *via* the Notice of Hearing dated April 5, 1994[30] mailed to petitioner. Respondent's claim is however inaccurate if not untrue. His own witness Attorney Ariel Crispin D. Ante could not even declare with certainty that the said Notice of Hearing of April 5, 1994 was sent or mailed to and received by petitioner. Worse, he was not competent to testify on the matter as the mailing of the said notice was not within his province for it was the function of

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[27] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010.
[28] *Bank of Philippine Islands vs. Commissioner of Internal Revenue,* G.R. No. 139736, October 17, 2005.
[29] Par, 10, Additional Facts Stipulated, JSFI, Docket, p. 131.
[30] Exhibit "R-2", BIR Records, p. 917.

the General Services Division of the BIR. Atty. Ariel Crispin D. Ante[31] testified as follows:

ATTY. NAPUTO:

Q. You mentioned in your answer to Question No. 14 that a Notice of Hearing was issued to Petitioner, am I correct?

ATTY. ANTE:

A. Yes.

ATTY. NAPUTO:

Q. In Question No. 15, you were asked how sure were you that the taxpayer received the Notice of Hearing. Could you clarify your answer to this Question No. 15?

ATTY. ANTE:

A. Your Honors, based on the records when I handled the case, I saw the Notice of Hearing there. Attached to the docket, Your Honors. These were the documents that I identified earlier.

ATTY. NAPUTO:

Q. Alright. And because of that document you saw, you concluded, as per your Answer to Question No. 15 that indeed the Notice of Hearing was received by Petitioner?

ATTY. ANTE:

A. I did not confirm, Your Honors that it was received. But based on the records, Your Honors, it was issued because the mailing of the document then was with the General Services Division. We only issue the Notice of Hearing.

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[31] Transcript of the Stenographic Notes taken at the hearing held on November 6, 2018, pp. 9 to 21.

Based on records, Your Honors, there is here appearing to be the records of the Appellate Division stating the First Far East letter to the taxpayer 9451994 and the letter to Jesus Mendoza of Industry Audit Division and GSD (Pause) I can't read, your Honors but there is one date here, 4694.

ATTY. NAPUTO:

Q. What are those records?

ATTY. ANTE:

A: These are the records of the Appellate Division when we are mailing. When we issue Notice of Hearing or anything going to other Divisions, we have a record book that is kept with the Records Officer, Your Honors.

ATTY. NAPUTO:

Q: In other words, those are internal records of the BIR?

ATTY. ANTE:

A: The Appellate Division.

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ATTY. VICENTE:

Q: So, based on this record. Is it correct that you forwarded the Notice of Hearing to GSD?

ATTY. ANTE:

Yes.

ATTY. VICENTE:

Q: What is the function of the GSD in this transaction?

ATTY. ANTE:

A: They are the one assigned to do the mailing of any communication.

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JUSTICE MANAHAN:

I just want to make a follow-up on the answer to Question No. 14, about the service of Notice of Hearing. In your answer, you mentioned that the service of the Notice of Hearing was by registered mail.

What is the documentary proof that Notice was really serve through registered mail? What document will support that?

ATTY. ANTE:

A: The one that I mentioned, Your Honors. The copy of the Certification from the General Service Division.

JUSTICE MANAHAN:

So, what is that document?

ATTY. ANTE:

A: This is photocopy of the Logbook of the General Services of the Appellate Division.

JUSTICE MANAHAN:

So, is there a Registry Receipt, Return Card or a Certification from the Post Master General?

ATTY. ANTE:

A. None, Your Honors."

To prove the fact of mailing, it is essential to present the registry receipt and the Registry return card issued by the Postmaster of the Bureau of Posts bearing the signature of the recipient taxpayer or its duly authorized representative signifying receipt of the subject mail matter.

A certification issued by the Postmaster that the subject mail matter was indeed sent could have saved the day for respondent who also failed to adduce the same. The Court is not inclined to give credence to the self-serving documentations adduced by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing.[32]

Simply said, the Court cannot take hook-line and sinker respondent's claim that the Notice of Hearing was mailed to, and received by petitioner, without required proof to establish the same. With this finding, the three (3)-year prescriptive period for collection under Section 223(c) of the NIRC of 1986 was not suspended, insofar as the subject 1990 tax assessments, embodied in Demand Letter dated May 20, 1993 and Assessment Notice Nos. FAS 2-90-93-002290, FAS 2-90-93-002291, and FAS 2-90-93-002292, in the total amount of ₱24,357,722.32,[33] are concerned.

Counting three (3) years from the receipt of the said assessments by petitioner, i.e., on May 25, 1993,[34] the three (3)-year period to collect the same ended on May 25, 1996. Correspondingly, the assessed taxes may no longer be collected on the ground of prescription.

Significantly, a Memorandum was issued by the Chief of the BIR's Appellate Division, Angel G. Pasion,[35] concurred by Marissa O. Cabreros, OIC-Assistant Commissioner, recommending the cancellation of the subject assessments on ground of prescription, the pertinent portions of which read as follows:

> **On March 25, 2009 the Chief, Appellate Division, based on the existing records of the office showing that the Notice of Hearing was actually forwarded to the General Services Division for mailing on April 5, 1994, requested for the certification/proof of mailing to ascertain whether said Notice of Hearing was indeed received by FFEDC or its counsel. The OIC-Chief, General Services Division (GSD) of this Bureau,**

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[32] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[33] Refer to Par. 9, Additional Facts Stipulated, JSFI, Docket, p. 131.
[34] Refer to Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 130.
[35] Exhibit "R-5", BIR Records, pp. 1067 to 1076.

> **in a letter dated April 16, 2009 informed our office that they cannot issue the requested certification for the reason that the Mailing Section of the General Services had been merged with the Printing Section. The logbook which serves as proof that said document was actually mailed was lost in the process of the merging of the afore-cited Sections.** (Pls. see attached letter of the OIC-Chief, GSD on page 1006, Dkt.)
>
> Having no other evidence on record to prove that the request for reinvestigation filed by FFEDC was granted by the Commissioner or his duly authorized representative, this Office, has no other recourse but to concur with the observation of the Assistant Commissioner, Collection Service, that the right of the BIR to collect has indeed prescribed.
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> In view of all the foregoing, it is the considered opinion of this Office that the right of the government to collect from FFEDC the aggregate amount of P24,357,722.32 as deficiency income, value-added and expanded withholding taxes for the taxable year 1990 and covered by Assessment Notice Nos. FAS-2-90-93-002290, FAS-2-90-93-002291 and FAS-2-90-93-002292 all dated May 20, 1993, may be cancelled on the ground of prescription.
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> Accordingly, the Assistant Commissioner, Legal Service may now issue the corresponding Authority to Cancel Assessment (ATCA) pursuant to II (4) of Revenue Delegation Authority Order No. 6-2001 dated September 27, 2001, xxx. [36]

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the 1990 tax assessments issued against petitioner for income tax, expanded withholding tax, and value-added tax in the aggregate amount of ₱24,357,722.32, are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[36] Exhibit "R-5", BIR Records, at p. 1068.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice