REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TOP DRAW ANIMATION, INC., *Petitioner,*	**CTA Case No. 8863**
	Members:
-versus-	**CASTAÑEDA, JR.,** *Chairperson* *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 04 2018 9:00 am

x- -x

RESOLUTION

MANAHAN, *J.:*

This resolves the **Motion for Reconsideration (Decision dated 4 October 2018)**[1] of respondent Commissioner of Internal Revenue (CIR) asking this Court for the reversal and setting aside of this Court's Decision dated October 4, 2018 which dispositive portion is shown below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the subject Preliminary Collection Letter and Final Notice Before Seizure are hereby **CANCELLED** for being **NULL AND VOID**.
>
> **SO ORDERED**.

Respondent argues that this Court has no jurisdiction over the instant case because petitioner failed to file a valid protest. Thus, the tax assessments in issue had already become final, executory and demandable.

He also argues that the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) were properly served,

[1] Docket, CTA Case No. 8863, pp. 935-940.

hence, the issuance of Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) was valid.

On the other hand, petitioner in its Comment,[2] argues that there was no FLD and FAN issued by the respondent or if indeed such were issued, the same were never received by it.

We deny the motion for lack of merit.

Although respondent's arguments were already properly and thoroughly discussed in the assailed decision, we reiterate the disquisitions in the said decision pertaining this Court's jurisdiction, to wit:

> The jurisdiction of the CTA regarding internal revenue taxes is provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:
>
> > "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
> >
> > (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*)
>
> Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:
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> > "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
> >
> > (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
> >
> > (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**

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[2] Docket, Comment/Opposition (Re: Motion for Reconsideration dated 18 October 2018), pp. 943-949.

> **Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;" (*Emphasis supplied*)

Respondent argues that since petitioner failed to file a valid protest against the FAN, the latter has become final, executory, and demandable, hence, this Court has no longer any jurisdiction over the case.

Respondent arguably is insinuating that since there was an absence of a valid protest by the petitioner, there was no disputed assessment to speak of. Thus, respondent's issuance of a PCL was valid and enforceable.

On this note, respondent should be aware that the abovementioned legal provision does not pertain only to disputed assessments or refunds of internal revenue taxes but also to other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, the Supreme Court ruled:

> "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals*, the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide "other matters" related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.
>
> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
>
> Section 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR)."
>
> In the instant case, the issue raised by the petitioner is the invalid issuance of the FNBS by the respondent without the former receiving a FAN from the latter. Such issuance is a categorical act on the part of the respondent to collect the subject tax assessment from the petitioner who has not received any FAN. Thus, it falls squarely within the jurisdiction of this Court under Section 7(a)(1) of RA No. 1125, as amended.
>
> The absence of a valid protest will not preclude this Court from taking cognizance of the instant petition especially when the allegation of the petitioner in assailing such argument is the failure on the part of the respondent to validly serve the required FAN which allegedly violated the right of petitioner to due process.
>
> The law and jurisprudence provide that the subject matter on the issuance of FNBS in the absence of a valid service of a FAN falls squarely under the classification of "other matters arising under the National Internal Revenue Code". Thus, this Court has jurisdiction on the instant petition.

As to respondent's argument on the regularity of his service of the FLD and FAN through registered mail, such presumption may be rebutted when the addressee, which is the petitioner in the instant case, denies receiving said registered mail. In *Barcelon, Roxas Securities, Inc. (now known* *as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[3] the Supreme Court ruled that when the addressee denied such receipt, the burden to prove the actual receipt is shifted to the one who made the mailing of said registered mail, to wit:

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

However, as discussed in the assailed decision, respondent failed to prove that petitioner had actually received the FLD and FAN,[4] to wit:

> A scrutiny of the BIR Records marked as Exhibit "R-1" reveals that FANs dated March 8, 2013 for income tax (IT), documentary stamp tax (DST), and compromise penalty (CP), and FLD dated March 8, 2013 for deficiency IT, DST, and CP, were issued. However, there was no indication on the face of said documents that the same were received by any official representative of the petitioner.
>
> Further study of the BIR Records indicates that in a Memorandum for the Revenue District Officer (RDO) of Revenue District No. 43A, Pasig City, as to the service of the PAN, a certain Rina Manalastas had received the said memorandum and PAN on February 15, 2013 without any indication as to the latter's privity to or connection with the petitioner or her authority in receiving said memorandum and PAN.
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> Another Memorandum for the said RDO as to the service of the FAN was also found in the said BIR Records. However, there was no indication on the face of said memorandum that any official representative of the petitioner had received the same. The above-mentioned FANs were not attached to the said memorandum unlike in the preceding paragraph wherein the receiving copy of the PAN

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[3] G.R. No. 157064, August 07, 2006.
[4] Docket, Decision dated October 4, 2018, pp. 930-931.

> was attached to the covering memorandum as evidenced by the similar date of receipt thereof by Ms. Manalastas.
>
> Thus, in the absence of proof of receipt of the FLD/FAN, petitioner's allegation of not receiving the FAN is given credence by this Court.

The effect of respondent's failure to establish petitioner's actual receipt of the subject FDL and FAN had rendered the subsequent issuance of notices null and void as ruled in the said assailed decision,[5] to wit:

> Thus, the effect of such non-compliance with the given protest procedures is tantamount to a violation of the taxpayer's right to due process which will render respondent's further action a nullity.
>
> In *Commissioner of Internal Revenue v. Azucena T. Reyes*, the Supreme Court ruled:
>
> > xxx petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit**. (*Emphasis supplied*)
>
> Thus, respondent's issuance of the PCL and the FNBS was null and void as no collection can stem from an invalid tax assessment. As the case of *Samar-I Electric Cooperative v. Commissioner of Internal Revenue* aptly ruled, and we quote:
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> > "...To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence..."

There being no other new issues or matters raised by the respondent in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Decision dated July 10, 2018)** is hereby **DENIED** for lack of merit. Accordingly, the assailed decision promulgated on October 4, 2018 is hereby **AFFIRMED**.

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[5] Docket, Decision dated October 4, 2018, p. 933.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice