REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

UPSI PROPERTY HOLDINGS, INC., *Petitioner,*	**CTA Case No. 8860**
-*versus*-	Members:
	CASTAÑEDA, JR., *Chairperson*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**CASANOVA,** *and* **MANAHAN,** *JJ.*
	Promulgated: AUG 2 2 2018 9:50 a.m.

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DECISION

MANAHAN, J.:

This involves a Petition for Review filed on 08 August 2014 by UPSI Property Holdings, Inc., as petitioner, against the Commissioner of Internal Revenue, as respondent, before the Court in Division.

Petitioner seeks the cancellation and withdrawal of the deficiency income tax, and fringe benefit tax (FBT) assessment issued against it for fiscal year ended March 31, 2009 in the total amount of Php32,533,692.87, inclusive of interest, surcharge and compromise penalty.

PARTIES

Petitioner UPSI Property Holdings, Inc. is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of developing and leasing of real property. *om*

Respondent is the Commissioner of Internal Revenue, duly appointed to exercise the powers and perform the duties of his office including, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS

The Joint Stipulation of Facts ("JSF")[1] filed with this Court on May 8, 2018, present the following factual background of the case, *viz:*

"3. For taxable year ended 31 March 2009, UPSI duly filed its Annual Income Tax Return (BIR Form No. 1702).

4. UPSI received a Letter of Authority (ref: SN: eLA201000045120; LOA-034-2011-00000182), dated 09 August 2011, issued by Mr. Alfredo V. Misajon, Regional Director of Revenue Region No. 006-Manila, to examine the Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from 01 April 2008 to 31 March 2009.

5. UPSI received a First Request for Presentation of Records dated 10 August 2011, issued by Mr. Petronilo C. Fernando, Revenue District Officer of Revenue District Office No. 34 – Paco/Pandacan/Sta. Ana/San Andres, Revenue Region No. 006 -Manila, pursuant to said Letter of Authority (ref: SN: eLA201000045120; LOA-034-2011-00000182), directing the Petitioner to submit its books of accounts and other related accounting records, in coordination with Revenue Officer, Ms. Divina S. Santos.

6. UPSI received a Preliminary Assessment Notice ("PAN"), dated 26 June 2012, issued by Mr. Simplicio A. Madulara, OIC-Regional Director of Revenue Region No. 006- Manila.

7. In said PAN, the BIR presents the following findings upon its investigation and assesses deficiency: a) income tax amounting to Php141,704,789.03, including interest up to 30 June 2012 and compromise including surcharge, interest up to 30 June 2012 and compromise penalty, or for an aggregate

[1] Joint Stipulation of Facts and Issues ("JSFI"), Court Docket, Volume II, pp 672-676.

amount of Php143,213,829.91, for fiscal year ended 31 March 2009.

8. UPSI received the following communications, all dated 13 July 2012, and issued by Mr. Simplicio A. Madulara, OIC - Regional Director of Revenue Region No. 006-Manila;

a. Formal Letter of Demand for deficiency taxes involving: a) deficiency income tax; and, b) deficiency fringe benefit tax;
b. Assessment No. 34-FY033109-IT-3526, for the amount of :

Particular	Amount
1. Tax Due	P 88,995,909.43
2. Add: Surcharge (25%) Interest (up to 7-15-12)	P53,397,545.66
Suggested Compromise	
3. Total Amount Due	P142,393,455.09

c. Assessment No. 34-FY033109-FBT-3527, for the amount of:

Particular	Amount
1. Tax Due	P785,147.74
2. Add: Surcharge (25%)	P196,286.94
Interest (up to 7-15-2012)	P513,276.14
Suggested Compromise	
3. Total Amount Due	P1,494,710.82

d. Formal Letter of Demand for Compromise Penalty on Income Tax in the amount of Php50,000.00; and
e. Formal Letter of Demand for Compromise Penalty on Fringe Benefit Tax in the amount of Php20,000.00.

9. In said Formal Letter of Demand ("FLD") for deficiency taxes involving the alleged: a) deficiency income tax; and b) deficiency fringe benefit tax, the BIR reiterated its findings in the PAN, with interest, adjusted until 15 July 2012, or for an aggregate amount of Php143,888,165.91;

10. On 14 September 2012, UPSI filed its Protest to the FLD.

11. The Commissioner of Internal Revenue thru Regional Director Araceli L. Francisco, issued and caused the service to the Petitioner the Final Decision on Disputed Assessment dated

18 June 2014, and the same was duly received by the Petitioner on 11 July 2014.

12. The FDDA amended the disputed assessment by reducing the deficiency income tax assessment to Php31,178,324.40 and the deficiency fringe benefit tax assessment to Php1,355,368.47.

13. On 28 July 2014, UPSI received a letter dated 23 July 2014, signed by Ms. Araceli L. Francisco, Regional Director of Revenue Region No. 006-Manila, informing the Petitioner that due to the Petitioner's alleged failure to act on the FDDA, the entire docket of said case will be forwarded to Collection Division of said Revenue Region.

14. The FDDA imposes Compromise Penalties in the total amount of Php70,000.00.

15. The Commissioner of Internal Revenue thru Regional Director Araceli L. Francisco, issued and caused the service to the Petitioner the Preliminary Collection Letter dated 20 August 2014.

16. The existence, due execution and authenticity of the following documents:

a. Annual Income Tax Return (BIR Form No. 1702) for the taxable year 2009, which closed on 31 March 2009;
b. Letter of Authority No. SN:eLA201000045120 (LOA-034-2011-00000182) dated 09 August 2011;
c. First Request for Presentation of Records dated 10 August 2011;
d. Preliminary Assessment Notice dated 26 June 2012;
e. Assessment Notice No. 34-FY033109-IT-3526, Assessment Notice No. 34-FY033109-FBT-3527, and Formal Letter of Demand, all dated 13 July 2012, for deficiency income tax and fringe benefit tax amounting to Php142,393,455.09 and Php1,494,710.82, respectively, including increments;
f. Final Decision on Disputed Assessment dated 18 June 2014;
g. Preliminary Collection Letter dated 20 August 2014;

17. Within thirty (30) days from receipt of the FDDA, on 11 July 2014, the Petitioner filed a Petition for Review on 08 August 2014 with this Honorable Court."

On August 20, 2014, petitioner filed an "Urgent Motion to Suspend Collection of Taxes" requesting the Court to order respondent to hold in abeyance the enforcement of the FDDA and the collection of the alleged deficiency taxes to maintain the status quo pending the resolution of the instant case.

The Court granted the "Urgent Motion to Suspend Collection of Taxes" subject to petitioner's posting of a bond in the amount of Php50,000,000.00.[2]

Meanwhile, respondent filed his Answer on September 25, 2014 interposing his Special and Affirmative Defenses against the Petition for Review.[3]

Also, on September 25, 2014, respondent filed a 'Motion for Reconsideration" of the Court's Resolution granting petitioner's "Urgent Motion to Suspend Collection of Taxes".

On November 7, 2014, petitioner filed an "Omnibus Motion to Allow and Admit the Attached Amended Petition" which the Court granted in a Resolution dated January 8, 2015.

Respondent subsequently filed an Answer (Re: Amended Petition for Review dated 07 November 2014).

On November 17, 2014, the Court denied respondent's "Motion for Reconsideration" of the Resolution dated September 10, 2014 and affirmed its resolution granting the "Urgent Motion to Suspend Collection of Taxes" subject to the submission of various documents relative to the posting of a bond. Eventually, upon compliance with the requirements for a posting of a bond, the Court reiterated the granting of the "Urgent Motion to Suspend Collection of Taxes" and the approval of the surety bond filed by the petitioner.[4]

On March 2, 2015, respondent filed an "Omnibus Motion to Dismiss and Reset Pre-Trial Conference"[5] on the ground that the Court has no jurisdiction to take cognizance of the instant petition considering that the FLD/FANs all dated July 13, 2012 have become final and executory for failure of the petitioner to file a protest within the thirty (30) day prescriptive period.

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[2] Resolution dated September 10, 2014, Court Docket, Volume I, pp 258-259.
[3] Court Docket, Volume I, pp. 260-265.
[4] Resolution dated February 27, 2015, Court Docket, Volume I, pp. 492-495.
[5] Court Docket, Volume I, pp.568-574.

Pre-trial was set by the Court on March 5, 2015.

In a Resolution dated March 5, 2015[6], the Court denied respondent's Motion to Dismiss and ordered respondent to file his pre-trial brief and affidavits of his witnesses.

On March 2, 2015, petitioner filed its Pre-Trial Brief.[7]

On March 31, 2015, respondent filed his Pre-Trial Brief.[8]

On May 8, 2015, the parties submitted their Joint Stipulation of Facts.[9]

On May 18, 2015, the Court issued a Pre-Trial Order.[10]

During trial, petitioner presented Ms. Milagros B. Gawaran, Ms. Haydee Reyes-Arcenas, Architect Lilia Calulot and Paulo Campos, Jr. as its witnesses.

Respondent presented revenue officers Ms. Fremarie Aquino, Mr. Allan C. Quizon and Mr. Armando Macatangay and counsel Atty. Christopher Eugenio as his witnesses.

On July 30, 2015, petitioner filed its Formal Offer of Exhibits ("P-1 to "P-20") which were admitted by the Court[11], except for Exhibits "P-13", "P-14", "P-15" and "P-20" for failure to submit the originals for comparison.

A Motion for Reconsideration was filed by petitioner on the denial of the aforementioned exhibits which was partially granted by the Court while maintaining its denial of Exhibit "P-13".[12] However, the Court eventually admitted Exhibit "P-13" subject to the Court's final evaluation and/or appreciation of its purposes, materiality, relevancy and probative value to the issues involved in this case.[13]

Respondent filed his "Formal Offer of Evidence" on March 22, 2018 (Exhibits "R-1" to "R-23-a") which were all admitted by the Court on September 20, 2017. [14]

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[6] Court Docket, Volume I, page 608.
[7] Court Docket, Volume II, pp.582-592
[8] Court Docket, Volume II, pp. 612-617.
[9] Court Docket, Volume II, pp 672-676.
[10] Court Docket, Volume II, pp. 678-684.
[11] Resolution dated October 8, 2015, Court Docket, Volume I, pp. 847-848.
[12] Resolution dated July 8, 2016, pp. 1006-1007.
[13] Resolution dated October 20, 2016, Court Docket, Volume III, pp. 1025-1026.
[14] Resolution, Court Docket, Volume III, pp.1062 – 1063.

Petitioner filed its Memorandum on October 25, 2017 while respondent filed his Memorandum on October 27, 2017.

The case was deemed submitted for decision on November 2, 2017.

ISSUES

As the parties did not jointly stipulate the issues to be resolved by the Court, we adopt the following issues as culled from the parties' memoranda:

Issue for the Petitioner

Whether petitioner is liable for the alleged deficiency: A) Income Tax amounting to Php31,178,324.40, including interest and compromise penalty; and, B) Fringe Benefits Tax amounting to Php1,355,368.47, including surcharge, interest, and compromise penalty for an aggregate amount of Php32,533,692.87, for fiscal year ended 31 March 2009.

Issues for the Respondent

1.Whether the Honorable Court of Tax Appeals has jurisdiction to entertain the instant Petition for Review and Amended Petition for Review.

2.Whether Assessment Notice No. 34-FY0331909-IT-3526, Assessment Notice No. 34-FY033109-FBT-3527, and Formal Letter of Demand, all dated July 13, 2012, for deficiency income tax and fringe benefit tax amounting to Php142,393,455.09 and Php1,494,710.82, respectively, including increments, have become final and demandable.

3.Whether petitioner is liable for deficiency income tax and fringe benefit tax for taxable year ending March 31, 2009.

PETITIONER'S ARGUMENTS

Petitioner affirms the jurisdiction of the Court over its Petition for Review because it is an appeal from the Final Decision on Disputed Assessment (FDDA) issued by the respondent on its protest. With the FDDA as reference, petitioner asserts that the Petition for Review was timely filed because it was lodged with the Court on August 8, 2014 or thirty (30) days from its receipt of the said FDDA on July 11, 2014.

On the substantive aspect of the tax assessments, petitioner challenges the factual and legal bases of the FBT and income tax assessment and insists that these are based on mere assumptions and discrepancies taken from petitioner's Audited Financial Statements (AFS) and General Ledger.

For clarity, we provide below the arguments of petitioner per tax assessed.

A. Deficiency income tax on gain from sale of real property

Petitioner explains that the sale of the subject real property located in Sta. Ana is classified as a "capital asset" hence subject to the six percent (6%) capital gains tax (CGT) based on the actual consideration or fair market value (FMV) of the real property sold as determined by the CIR, whichever is higher pursuant to Section 24 (D) (1) in relation to Section 27 (D) (5) of the 1997 National Internal Revenue Code (NIRC), as amended.

Petitioner contravenes the theory of respondent that the subject real property is considered as an "ordinary asset" subject to the ordinary income tax rates because said property was not used in its trade or business. Petitioner adds that the subject real property is an idle and abandoned lot prior to its disposition which classifies said property as a capital asset and not an ordinary asset.

Petitioner sets forth the principle that there is no rigid or fixed formula to determine whether the property sold by a taxpayer was held primarily for sale to customers in the ordinary course of trade or business or whether the same is a capital asset. In the final analysis, the petitioner concludes that the classification (capital asset vs. ordinary asset) rests upon its own peculiar facts and circumstances and, in this case, petitioner asserts that the subject real property was not used in its trade or business hence deemed a capital asset.

Petitioner calls the attention of the Court to the fact that it already paid the CGT on the sale transaction which the representative of respondent accepted. Petitioner then avers that such acceptance of payment is considered unjust enrichment on the part of the government, if the BIR continues to demand additional income tax payments on the same sale transaction.

B. Deficiency FBT

Petitioner argues that not all fringe benefits are subject to FBT. It cites Section 33 (C) of the 1997 NIRC, as amended, which provides for certain fringe benefit items as exempt from FBT. Further, petitioner maintains that fringe benefits are not subject to FBT if they are required or necessary to the business of the employer, or for the convenience or advantage of the employer. Petitioner claims that the subject expenses, particularly membership fees, sports and social activities, etc., are in the nature of representation expenses not subject to FBT pursuant to Section 2 of Revenue Regulations (RR) No. 10-02 dated July 10, 2002. Petitioner continues its discourse by stating that RR 10-02 clearly covers country, golf, sports club or any other similar club expenses provided that the taxpayer maintains receipts and adequate records containing the required information such as the amount of these expenses as well as the date when and the place where these expenses were incurred.

C. Compromise Penalty

Petitioner challenges the legality of the imposition of the compromise penalty without the taxpayer's consent. Petitioner maintains that under Revenue Memorandum Order (RMO) No. 19-2007, compromise penalties are imposed only whenever there is a violation of the provisions of the 1997 NIRC. Petitioner claims that it has no civil or criminal liabilities incident to its alleged tax deficiencies, hence it should not be held liable for the compromise penalty.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent questions the jurisdiction of the Court over the Petition for Review because the FLD/FANs are already final, executory and demandable for failure of the petitioner to file a timely protest. To illustrate, respondent presents a timeline of events, thus:

July 13, 2012 - Respondent issued the FAN/FLD for taxable year 2009 for alleged deficiency FBT and income tax on the sale of real property.

July 18, 2012 – Petitioner received the subject FLD/FANs.

September 14, 2012 – Petitioner filed its protest to the FLD/FANs.

Based on the above dates, respondent points to the glaring lapse of the petitioner in failing to file a protest within thirty (30) days from receipt of the FLD/FANs as prescribed under Section 228 of the 1997 NIRC and Section 3.1.5 of RR No. 12-99.

Assuming without admitting that this Court has jurisdiction, respondent provides the following arguments on the following alleged tax deficiencies of petitioner:

A. Income Tax

Respondent emphatically claims that petitioner failed to declare the gain on the sale of the subject real property which is a violation of Section 32 of the 1997 NIRC, as amended. Respondent remains consistent on the treatment of the subject real property as an ordinary asset subject to income tax under Sections 39 (A) (1), 27 (A) and 28 (A) (1) of the 1997 NIRC, as amended, and implemented by RR No. 7-2003 dated December 27, 2002.

Respondent reminds the Court that in the Petition for Review filed by petitioner, the latter categorically admitted that it is engaged in the business of developing, operating and leasing real estate properties. In fact, respondent claims that the subject real property was used to be held for lease. Given these circumstances, respondent concludes that the subject real property is an ordinary and not a capital asset as claimed by the petitioner. Therefore, petitioner should be made liable for deficiency income tax in the amount of Php142,393,455.09.

B. FBT

Respondent defends the legality of the FBT assessment issued against the petitioner based on the clear provision of Section 33 of the 1997 NIRC, as amended, and maintains that petitioner failed to withhold and remit the FBT due on petitioner's payment of the expenses incurred by one of its officers.

Respondent maintains that these expenses were erroneously treated by petitioner as representation expenses but the receipts showed that they were issued in the name of one of its employees, thus the requisites under Revenue Memorandum Order (RMO) No. 10-02 for the deductibility of entertainment and representation expenses were not met, therefore such benefits should have been subjected to FBT.

RULING OF THE COURT

Before we delve into the substantive issues raised by both parties in this case, this Court finds it imperative to discuss the jurisdiction of this Court to take cognizance of the instant petition.

It is respondent's view that the Court has no jurisdiction over the subject matter of this Petition because the FLD/FANs issued to petitioner have become final, executory and demandable due to its failure to file a timely protest, thus there was no "disputed assessment" that can be appealed to this Court.

Petitioner strongly denies the timeline of events as narrated by respondent and offers its own narration of events in this way:

> **August 16, 2012** – Petitioner received the FLD/FANs for taxable year 2009.
>
> **September 14, 2012** – Petitioner filed a protest to the FLD/FANs.
>
> **July 11, 2014** – Petitioner received the FDDA issued by respondent on the protest filed.
>
> **August 8, 2014 –** Petitioner filed a Petition for Review with the Court assailing the legality of the FDDA issued by respondent.

It would seem that petitioner timely complied with the applicable prescriptive periods given its own version of the timeline of filings and receipts of documents. The protest was allegedly filed within thirty (30) days from receipt of the FLD/FANs and the Petition for Review was allegedly filed within the thirty (30) day period from receipt of the FDDA. All these alleged timely filings would apparently confer jurisdiction on the Court and provide it with the authority to resolve the substantive issues of the subject deficiency tax assessments.

But the Court is a trier of law and of facts and is best equipped to make the assessment of issues raised and evidence adduced before it.[15]

A review of the evidence and records of the case is essential to determine which version of the timeline has been well-established during trial.

To prove receipt of the FLD/FANs, petitioner presented the photocopies of the FLDs/FANs issued by respondent all dated July 13, 2012.[16] It also presented the protest letter it filed with the BIR dated September 14, 2012.[17]

On the other hand, respondent presented the following evidence, among others :

1. A faithful reproduction of the original of the Registry Receipt No. 92282 dated July 13, 2012[18] to prove that the FLD/FANs were sent by registered mail.

2. A faithful reproduction of the original of the Certification issued by the Head, Records Unit, Office of the Postmaster[19] to the effect that the *PAN* was mailed to the address of petitioner on June 26, 2012; the *FLD/FANs* were mailed to the address of petitioner on July 13, 2012 and that the FDDA was mailed to the address of petitioner on July 2, 2014.

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[15] Atlas Consolidated Mining and Development Corporation vs. CIR, G.R. No. 159490, February 8, 2008.
[16] Exhibits "P-10" and "P-11",Court Docket, Volume II, pp. 782-806.
[17] Exhibit "P-12", Volume II, Court Docket, pp. 807-816.
[18] Exhibit "R-17", Court Docket, Volume II, page 663.
[19] Exhibit "R-21, Court Docket, Volume II, page 708.

3. A faithful reproduction of the original of the Request Letter dated September 22, 2014 to prove that the BIR requested for a certificate of service from the Postmaster, Central Office, Manila.[20]

4. Judicial affidavit of Armando C. Macatangay, the representative of the BIR, who testified that the aforementioned official notices were sent to the address of petitioner by registered mail.[21]

In the assessment of the evidence presented by both parties, the Court finds that the evidence adduced by the respondent is more credible as he was able to sufficiently and more empirically support the timeline of receipt of the FLD/FANs by the petitioner. In contrast, petitioner failed to document and present such documentary proof of its date of receipt of the FLD/FANs other than the photocopies of the final assessment notices.

The crucial test in determining whether jurisdiction is conferred upon this Court is the timely filing of the protest, otherwise, there is no disputed assessment that is appealable to this Court under Section 7(a) of RA 1125 as amended by RA 9282, as implemented by Section 3 (a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA).

The facts and records of this case disclose that the subject FLD/FANs were sent to the petitioner by registered mail.

It is well-recognized that service of official documents by the government be it decisions, summons and in this case, assessments, may be done by **personal service** or by **mail** pursuant to Section 5, Rule 13 of the Rules of Court and we quote:

Rule 13

> Section 5. *Modes of Service.* – Service of pleadings, motions, notices, orders, judgements and other papers shall be made either personally or by mail.

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[20] Exhibit R-20", Court Docket, Volume II, page 709.
[21] Exhibit "R-22", Court Docket, Volume II, pp. 653-654.

Section 3.1.2 RR No. 12-99, directs the concerned revenue officers to serve the PAN by registered mail, to wit:

> "3.1.2 Preliminary Assessment Notice (PAN).
>
> If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, **at least by registered mail,** a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." (emphasis supplied)

However, for the FAN, Section 3.1.4 of RR 12-99 allows two modes of service i.e. by registered mail or by personal delivery and we quote:

> "3.1.4 Formal Letter of Demand and Assessment Notice.
>
> The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery."** (emphasis supplied)

Section 3, Rule 131 of the Rules of Court also provide the disputable presumption accorded to mailed letters, thus:

> **"Rule 131**
>
> Section 3. *Disputable presumptions.* The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> (v) That a letter duly directed and mailed was received in the regular course of mail;

A presumption that is merely disputable may be overcome by evidence to the contrary. The Supreme Court has ruled that in the case of tax assessments, a mere direct denial made by the taxpayer is enough to rebut the disputable presumption provided under the aforequoted Section 3 (v) of Rule 131.[22] Note that such disputable presumption in Section 3 (v) of Rule 131 refers only to a situation when service and receipt of official notices are sent via mail whether this be by ordinary mail or by registered mail.

The Rules of Court also provide the documents to prove completed service. Section 13 of Rule 13, provides:

> **"Rule 13**
>
> Section 13. Proof of Service. -Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by *ordinary mail*, proof thereof shall consist of an affidavit of the person mailing of the facts showing compliance with Section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee."** (emphasis supplied)

Based on the above provisions of the Rules of Court, the documents to prove completeness of service will vary depending upon the method used, thus:

a. If made by *personal service*, proof of service shall consist of a written admission of the party served OR official return of the server OR the affidavit of the party serving, containing a full statement of the date, place and manner of service.
b. If made by *ordinary mail*, proof of service shall consist of the affidavit of the person mailing of the facts showing compliance with Section 7 of Rule 131 of the Rules of Court.
c. If made by *registered mail*, proof shall be made by such *affidavit* and the *registry receipt*.

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[22] CIR vs. Metro Star Superama, G.R. No. 185371, December 8, 2010 ; Barcelon vs. CIR, G.R. No. 157064, August 7, 2006.

Note that the provisions of Section 13 of Rule 13 of the Rules of Court fall outside the realm of "presumptions" unlike that which is provided in Section 3 (v) of Rule 131 quoted earlier.

As differentiated from a "mere disputable presumption", the standards set forth in Section 13, Rule 131 are the types of evidence that are sufficient to prove a fact, i.e., completed service. What then would constitute as completed service if the same is done through registered mail? The answer is clearly set forth in Section 13 when it points to two documents to prove completeness of service, namely, a) the affidavit of the person mailing and the (b) registry receipt issued by the mailing office.

This was affirmed by the Supreme Court in the case of *Ting vs. Court of Appeals* [23] when it said:

> "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 7 of Rule 13 (see Section 13, Rule 13, 1997 Rules of Procedure)."

This was further confirmed in *Republic of the Philippines vs. Resins, Inc.*[24] where the Supreme Court stressed the importance of the aforementioned documents to prove receipt, thus:

> "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, Rule 13 of the 1997 Rules of Civil Procedure." (emphasis supplied)
>
> xxx xxx xxx
>
> "It cannot be stressed enough that it is the registry receipt issued by the mailing office and the affidavit of the person mailing which proves service made through registered mail. Absent one or the other, or worse both, there is no proof of service."

In the recent case of *CIR vs. GJM Phils. Manufacturing Inc.* [25], the Supreme Court accorded the same importance to the presentation of the registry receipt OR the registry return card to prove completeness of service and we quote:

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[23] G.R. No. 140665, November 13, 2000.
[24] G.R. No. 175891, January 12, 2010.
[25] G.R. No, 202695, February 29, 2016. *cm*

> "To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts *or* the Registry Return Card which would have been signed by the taxpayer or its authorized representative." (italics ours)

The aforementioned evidence presented by the respondent specifically the **Registry Receipt No. 922821**, the **Judicial Affidavit of Mr. Armando Macatangay** and the **Certification issued by the Head of the Records Unit of the Postmaster,** Central Office, Manila[26] are more than sufficient to prove receipt by the petitioner and the date when the latter received it. In fact, postal office certifications are considered *prima facie* proof that the FLD/FANs were delivered to the addressees on the date aforestated.

In the case of *Scenarios, Inc. and/or Rhotziv Bago vs. Jelly Vinluan*[27], the Supreme Court ruled:

> "**The postal office certifications are prima facie proof that the said processes had been delivered to and received by petitioners.** The presumption of regularity in the performance of official duty stands. It is incumbent upon petitioners to prove otherwise, a task which they failed to do." (emphasis supplied)

On testifying on the contents of the Certification issued by the Head of the Records Unit of the Postmaster, Mr. Rodrigo SP. Romero[28], stated:

> "Q. By the way, what was the content of the Certification you executed and issued to the BIR, Revenue Region No. 6, Manila?
>
> A. The Certification in part provided that Registered Mail No. 922821 addressed to UPSI Property Holdings, Inc. at 1122 General Luna St., Paco, Manila posted at Manila Central Post Office on 13 July 2012 **was delivered by Postman/Window Delivery Clerk /Lock Box Clerk LC#213 duly received by Jeshra Faye Layog on 18 July 2012 (LC#213-Crisper Jones Pahignalo)."** (emphasis supplied)

It is worthy to note that petitioner did not dismiss nor deny the authority of the recipient named "Jeshra Faye Layog" who received the official notices at petitioner's office address on July

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[26] Exhibit "R-21", Court Docket, Volume II, page708.
[27] G.R. No. 173283, September 17, 2008.
[28] Judicial Affidavit of Rodrigo SP. Romero, Court Docket, Volume II, pp.703-705.

18, 2012. Instead of proving that the person who received the FLD/FANs is not its employee nor an authorized representative, petitioner merely downplayed this factual allegation by requiring respondent to establish the relationship of "Jeshra Faye Layog" to its company, thus failing to overcome the disputable presumption that a letter duly directed and mailed was received in the regular course of mail.[29] Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or of any fact in issue by the amount of evidence required by law. [30] The records of the case reveal that petitioner failed to discharge this burden.

The argument of petitioner that respondent did not present any evidence that petitioner received the FLD/FANs on July 18, 2012 is belied by the records of this case. On the contrary, this Court finds the evidence submitted by respondent, sufficient to establish completed service, i.e., receipt of the FLD/FANs on July 18, 2012 as alleged by respondent. Having then received the FLD/FANs on said date, it was incumbent on the part of the petitioner to file the protest within thirty (30) days from receipt thereof. Unfortunately, records show that petitioner filed the protest only on September 14, 2012, more than the thirty-day prescriptive period provided under Section 228 of the 1997 NIRC and we quote:

> "Section 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases :
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his

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[29] Section 3 (v) , Rule 131, Rules of Court.

[30] Vitarich Corporation vs. Chona Locsin, G.R. No. 181560, November 15, 2010.

> duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.** Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. (emphasis supplied)

Section 3.1.5 of RR No. 12-99, which implemented Section 228 of the 1997 NIRC, provides as follows:

> "Section 3.1.5 – *Disputed Assessment-* **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.** If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> xxx xxx xxx
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable." (emphasis supplied)**

It is clear from the aforequoted law and relevant regulations, that the failure to file a timely protest makes the assessment final, demandable and unappealable. Petitioner in the instant case claims receipt of the FLD/FANs on August 16, 2012 but failed to substantiate nor corroborate the same with documentary evidence. Thus, it has lost its right to contest the assessment before the Court. On its part, the Court has no jurisdiction over an assessment which has become final and unappealable. The Supreme Court has made this clear in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[31], where it ruled:

> "The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. **Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction**. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments." (emphasis supplied)

It is important to stress the well-entrenched rule that the Court of Tax Appeals is a court of special jurisdiction and it can take cognizance only of such matters that are clearly within its jurisdiction[32], and these matters are specified in Section 7 (a) (1) of RA 9282 which provides:

> Section 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 Code or other laws administered by the Bureau of Internal Revenue;" (emphasis supplied).

The Revised Rules of the Court of Tax Appeals (RRCTA), Section 3(a) (1), Rule 4 further provides as follows:

> Sec.3. Cases within the jurisdiction of the Court in Divisions. –
>
> The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:

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[31] G.R. No. 134062, April 17, 2007.

[32] Rizal Commercial Banking Corporation vs. CIR, G.R. No. 168498, April 24, 2007. *un*

> (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 Code or other laws administered by the Bureau of Internal Revenue. (emphasis supplied).

In the instant case, there is no disputed assessment appealable to this Court because the FLD/FANs have already attained finality long before the FDDA was issued by the respondent. It is therefore erroneous on the part of the petitioner to assume that the FDDA superseded the FAN for the following reasons:

1.The FDDA was issued after the FAN has already become final and executory; and

2. The FDDA is not equivalent to a FAN to have the effect of superseding the latter. An FDDA is a decision of the Commissioner of Internal Revenue on a disputed assessment and clearly differs from the assessment itself.[33]

Having found that the Court has no jurisdiction, we deem it beyond our authority to resolve the other issues.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of jurisdiction.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[33] CIR vs. Liquigaz Philippines Corporation; Liquigaz Philippines Corporation vs. CIR, G.R. Nos. 215534 and 215557, April 18, 2016.

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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice