REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

T SHUTTLE SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, REVENUE DISTRICT OFFICER (RDO), COLLECTION SUPERVISOR AND COLLECTION OFFICERS OF REVENUE DISTRICT OFFICE 57 (RDO-57) BIÑAN AND SAN PEDRO, LAGUNA,
Respondents.

CTA CASE NO. 8650

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
AUG 30 2016 11:30 p.m.

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DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review filed by petitioner T-Shuttle Services, Inc. seeking to set aside Warrant of Distraint and/or Levy No. 057-03-13-074-12 which in effect denied petitioner's protest on the Final Assessment Notice dated July 20, 2010 with attached Assessment Notice Nos. F-057-LNTF-07-VT-002 and F-057-LNTF-07-IT-002, for alleged deficiency Value-Added Tax ("VAT") of ₱3,720,488.73 and income tax of ₱5,305,486.50, or a total of ₱9,025,975.23, for calendar year 2007.

THE PARTIES

Petitioner, T Shuttle Services, Inc. ("T Shuttle" or "petitioner"), is a corporation duly formed and existing under the laws of the Republic of the Philippines with principal address at Southplains I, Brgy. Sto Tomas, Biñan, Laguna.[1]

On the other hand, respondents Commissioner of Internal Revenue ("CIR"), Revenue District Officer, Collection Supervisor and Collection Officers of Revenue District Office ("RDO") – 57 are the officers who effectively denied the protest and issued the challenged warrant. Respondent CIR may be served with summons and processes at the BIR National Office Building, BIR Road, Diliman, Quezon City. While respondents Revenue District Officer, Collection Supervisor and Collection Officers of RDO – 57 may be served with summons and other processes at Bureau of Internal Revenue ("BIR") District Office No. 57, Biñan, Laguna.[2]

On July 15, 2009, respondent CIR issued a Letter Notice ("LN") No. 057-RLF-07-00-00047 informing petitioner of the discrepancy resulting from the Reconciliation of Listing for Enforcement ("RELIEF") and Third Party Matching under the Tax Reconciliation System ("TRS"), as compared to the tax returns filed by petitioner for calendar year 2007.[3] The LN was received and signed by a certain Malou Bohol on July 24, 2009.

The BIR, thru its LN Task Force Head, Salina B. Marinduque, then issued a Follow-Up Letter dated August 24, 2009, which was received and signed by a certain Amado Ramos.[4]

On January 12, 2010, without any reply from petitioner, Letter of Authority ("LOA") No. 2008 00044533 for the examination of petitioner's book of accounts and other accounting records for VAT, income tax and withholding tax for calendar year 2007,[5] and a Notice for Informal Conference were issued.[6] Both the LOA and Notice for Informal Conference were received and signed by a certain B. Benitez on January 12, 2010.

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[1] CTA Docket, p. 8.
[2] Admitted Facts, Joint Stipulation of Facts and Issues, pp. 301-302.
[3] BIR Records, p. 5.
[4] BIR Records, p. 6.
[5] BIR Records, p. 16.
[6] BIR Records, p. 13.

On March 29, 2010, respondent CIR, thru Deputy Commissioner Nelson M. Aspe, then issued a Preliminary Assessment Notice ("PAN"), with attached Annex described as "Details of Discrepancies".[7]

On July 20, 2010, respondent CIR, thru Deputy Commissioner Nelson M. Aspe, issued a Final Assessment Notice with attached Assessment Notice Nos. F-057-LNTF-07-VT-002 and F-057-LNTF-07-IT-002 ("FAN"), for deficiency VAT, and deficiency income tax[8]:

I. DEFICIENCY VALUE ADDED TAX		
Discrepancy pet Letter Notice (Sales)	P	15,478,710.74
Multiply by VAT Rate		12%
Deficiency VAT	P	1,857,445.20
Add: 50% Surcharge		928,722.60
20% interest p.a. up to (7/31/2010)		934,320.93
TOTAL AMOUNT DUE	**P**	**3,720,488.73**
II. DEFICIENCY INCOME TAX		
Net Taxable Income per Annual ITR filed	P	-
Add: Additional Gross Income (Figure 1)		7,739,355.00
Total Taxable Income	P	7,739,355.00
Multiply by Normal Income Tax Rate		35%
Adjusted Income Tax Due		2,708,774.25
Less: Income tax due per ITR filed		-
Deficiency Income Tax		2,708,774.25
Add: 50% Surcharge		1,354,387.12
20% interest p.a. up to (7/31/2010)		1,242,325.13
TOTAL AMOUNT DUE	**P**	**5,305,486.50**

On November 28, 2012, respondent RDO then issued a Preliminary Collection Letter, requesting petitioner to pay the aforementioned tax liability within ten (10) days from receipt thereof.[9]

On January 23, 2013, respondent RDO issued a Final Notice Before Seizure ("Final Notice")[10] stating that respondent has yet to receive a reply from petitioner and in connection therewith, gave petitioner the last opportunity to settle its tax liability within ten (10) days from receipt thereof. The Final Notice also stated that should respondent fail to hear from petitioner within the period granted, respondent would be constrained to enforce collection through

[7] BIR Records, pp. 24-29.
[8] BIR Records, pp. 30-32.
[9] Exhibit "R-2", BIR Records, p. 38.
[10] Exhibit "R-3", BIR Records, p. 39.

summary remedies provided in the Tax Code, and/or to refer the case to the Legal Division for the filing of the appropriate judicial action.

On March 20, 2013, petitioner, through its counsel, sent a letter to respondents RDO and Collection Officers claiming that they were not aware of any pending liabilities for the year 2007, and that Mr. B. Benitez, who signed and received the preliminary notices, was a disgruntled rank and file employee who was not authorized to receive the notices and who did not forward the same to petitioner.[11] In the said letter, petitioner also requested for a grace period of one (1) month to review its documents.

In a letter dated April 2, 2013, respondent RDO denied petitioner's request for grace period for lack of basis.[12]

On April 18, 2013, petitioner sent respondent CIR its protest against the Final Notice, claiming that it is not liable for any deficiency income taxes for the year 2007; that it is exempt from payment of VAT since it is a common carrier; that service of the Notice for Informal Conference was invalid; and that it did not receive the PAN and FAN prior to the issuance of the Final Notice.[13]

On April 22, 2013, petitioner wrote another letter to respondent RDO requesting them to take due note of the protest filed and received on April 19, 2013, with the office of the Deputy Commissioner for Operations, Mr. Nelson M. Aspe, refuting the assessed tax liabilities.[14] The said letter was received by the BIR on April 23, 2013.

On April 23, 2013, Warrant of Distraint and/or Levy No. 057-03-13-074-R ("WDL") was constructively served to petitioner for refusal to acknowledge the service of the warrant.[15]

Hence, on May 2, 2013, petitioner filed the instant Petition for Review (With Prayer for Preliminary Injunction and Issuance of a Temporary Restraining Order).[16]

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[11] Exhibit "R-4", BIR Records, pp. 41-42.
[12] Exhibit "R-5", BIR Records, p. 45.
[13] BIR Records, pp. 48-56.
[14] BIR Records, pp. 67-68.
[15] Exhibit "R-6", BIR Records, p. 71.
[16] Petition for Review dated April 25, 2013, CTA Docket, pp. 6- 83.

In the May 17, 2013 hearing, the Court informed the parties that petitioner's Motion for Preliminary Injunction with Issuance of a Temporary Restraining Order shall be treated as a Motion for Suspension of Collection of Tax, pursuant to Rule 10 of the Revised Rules of the Court of Tax Appeals.[17] In the same hearing, petitioner presented as its witnesses in support of its motion, Ms. Nely G. Legaspi and Ms. Ma. Lourdes B. Omas-as, and thereafter made an oral formal offer of evidence of its exhibits.[18]

On May 27, 2013, respondent CIR filed her Comment (Re: Petitioner's Motion for Suspension of Collection of Tax),[19] to which petitioner filed its Reply (To Respondent's Comment dated May 27, 2013) on June 10, 2013.[20]

In a Resolution dated July 8, 2013, the Court granted the Motion for Suspension of Collection of Taxes, subject to petitioner's depositing of a cash bond in the amount of Nine Million Twenty Five Thousand Nine Hundred and Seventy Five Pesos and Twenty Three Centavos (₱9,025,975.23), or posting of a GSIS bond or a bond from other reputable surety company duly accredited by the Supreme Court, in the amount equivalent to double the amount being collected or Eighteen Million Fifty One Thousand Nine Hundred and Fifty Pesos and Forty Six Centavos (₱18,051,950.46), within ten (10) days from receipt of the Resolution.[21]

On September 13, 2013, the Court granted the Motion to Admit Answer filed by respondents on September 2, 2013[22] and thereby admitted respondent's Answer dated August 22, 2013.[23]

In respondent CIR's Answer,[24] she raised the following special and affirmative defenses:

1. No error or illegality can be ascribed to respondent's assessment of petitioner's deficiency tax liability since due process was observed;

2. Petitioner failed to interpose a timely protest against the FAN and to submit the supporting documents necessary

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[17] CTA Docket, pp. 94-97.
[18] Minutes of the Hearing dated May 17, 2013, CTA Docket, pp. 90-92.
[19] CTA Docket, pp. 109-119.
[20] CTA Docket, pp. 132-142.
[21] CTA Docket, pp. 170-176.
[22] CTA Docket, 193-216.
[23] Answer, CTA Docket, pp. 200-216; Resolution dated September 13, 2013, CTA Docket, p. 227.
[24] CTA Docket, pp. 200-216.

to refute the findings of the revenue examiners, within the mandated sixty (60) day period;

3. Petitioner is liable for deficiency income tax and deficiency VAT; and,

4. There exists a presumption in favor of the propriety and exactness of tax assessments.

On September 4, 2013, petitioner filed a Manifestation and Motion,[25] stating that it will no longer file the bond for the suspension of the collection of tax; instead, believing that it would best serve the interest of both parties to the case, if its funds will be used to settle its tax liability through amicable settlement rather than pay exorbitant premiums for the surety bond, petitioner prayed that the Court issue a status quo order to give the parties time to reach an amicable settlement. Despite notice, respondents failed to file their comment to the Manifestation and Motion.[26]

In a Resolution dated December 16, 2013, the Court noted petitioner's Manifestation and denied its Motion for lack of merit.[27]

On December 18, 2013, petitioner filed another Manifestation with Motion reiterating its prayer for the issuance of a "status quo order" suspending the proceedings of the case, and requesting that the BIR docket be forwarded to RDO No. 57.[28]

On February 3, 2014, petitioner filed its Pre-Trial Brief,[29] while respondents filed their Pre-Trial Brief on February 6, 2014.[30]

During the Pre-Trial Conference on February 7, 2014, the Court noted petitioner's withdrawal of its Manifestation with Motion filed on December 18, 2013, since the certified true copy of the BIR docket had already been transmitted to RDO No. 57.[31]

On February 25, 2014, the parties submitted their Joint Stipulation of Facts and Issues,[32] and upon approval thereof on

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[25] CTA Docket, pp. 219-224.
[26] Records Verification dated October 18, 2013, CTA Docket, p. 228.
[27] CTA Docket, pp. 232-234.
[28] CTA Docket, pp. 235-242.
[29] CTA Docket, pp. 276-283.
[30] CTA Docket, pp. 262-267.
[31] CTA Docket, pp. 268-272.
[32] CTA Docket, pp. 301-305.

March 4, 2014,[33] the Court issued the Pre-Trial Order on March 13, 2014.[34]

On March 31, 2014, petitioner filed a Motion to Amend Pre-Trial Order.[35] Despite due notice, respondents failed to file their comment thereon.[36] In a Resolution dated July 7, 2014, the Court granted the Motion to Amend Pre-Trial Order.[37]

During trial, both parties presented their respective evidence. Petitioner adopted the testimony of its witnesses who testified during the hearing of its motion for suspension of collection of taxes held on May 17, 2013.[38]

Petitioner's evidence was admitted in the Court's Resolution dated June 20, 2014,[39] while respondents' evidence was admitted in the Court's Resolution dated November 11, 2015.[40]

With the filing of respondent CIR's Manifestation[41] on January 7, 2016 stating that she will adopt the arguments raised in her Answer filed on September 2, 2013, as her Memorandum, and with Petitioner's Memorandum filed on January 13, 2016,[42] the case was submitted for decision on January 27, 2016.[43]

THE ISSUE

In their Joint Stipulation of Facts and Issues,[44] the parties submitted for resolution the sole issue of whether petitioner is liable for deficiency income tax and VAT for CY 2007 in the total amount of ₱9,025,975.23, including surcharge, deficiency and delinquency interest.

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[33] CTA Docket, pp. 322-323.
[34] CTA Docket, pp. 325-331.
[35] CTA Docket, pp. 356-361.
[36] CTA Docket, p. 409.
[37] CTA Docket, pp. 411-412.
[38] CTA Docket, pp. 268-272.
[39] CTA Docket, pp. 407-408.
[40] CTA Docket, pp. 578-579.
[41] CTA Docket, pp. 587-589.
[42] CTA Docket, pp. 590-614.
[43] CTA Docket, p. 619.
[44] CTA Docket, p. 302.

PETITIONER'S ARGUMENTS

Petitioner argues that it was deprived of due process as it never received the LOA No. 2008 0004453, Notice for Informal Conference, PAN and FAN purportedly sent by respondents.[45]

Based on the records, the LOA and Notice for Informal Conference were signed as received by a certain Mr. B. Benitez. Petitioner, however, claims that Mr. Benitez was not authorized to receive such notices as he was a low level employee who had already left the company in March 2010.[46]

With regard to the PAN and FAN, respondents presented the Registry Return Receipts to prove that such were sent to petitioner through registered mail. Petitioner insists that the signature in the Registry Return Receipts does not indicate whose signature it is and that no evidence has been presented by respondent to authenticate the same.[47] Thus, petitioner claims that said PAN and FAN cannot be considered as valid as they were not properly served upon and received by petitioner.

Assuming that the PAN and FAN were actually served, petitioner argues that the PAN and FAN are invalid for failure to state the factual and legal basis thereof.[48]

Petitioner also contends that, as a common carrier already subject to percentage tax, its services are exempt from VAT pursuant to Section 109 (j) of the National Internal Revenue Code ("NIRC") of 1997, as amended, and Revenue Regulations No. 16-2005.[49]

Petitioner alleges that it is not liable for any supposed deficiency income tax as its Annual Income Tax Return for taxable year 2007 shows that the amount being assessed by respondents, as supposed additional gross income, had been duly declared and the taxes owing thereon had been fully paid.[50]

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[45] CTA Docket, pp. 12 and 596.
[46] CTA Docket, p. 601.
[47] CTA Docket, p. 602.
[48] CTA Docket, p. 605.
[49] CTA Docket, p. 608.
[50] CTA Docket, p. 609.

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Finally, petitioner posits that the Preliminary Collection Letter, Final Notice and WDL are null and void as they are based on a void assessment.[51]

RESPONDENTS' COUNTER-ARGUMENTS

On the other hand, respondents counter-argue that there was no error or illegality that can be ascribed to its assessment of petitioner's deficiency tax liability since procedural due process requirements were complied with in the issuance of such assessment;[52] that pursuant to Revenue Regulations ("RR") No. 12-99, service through registered mail is a valid mode of serving the PAN and FAN upon the taxpayer being assessed;[53] and that the existence of the Registry Return Receipts is adequate to show the fact of receipt of PAN and FAN by petitioner in the ordinary course of mail.

Respondents further aver that petitioner failed to interpose a timely protest against the FAN issued against it and to submit the supporting documents necessary to refute the findings of the revenue examiners, within the prescribed period of sixty (60) days.[54] Given that petitioner only protested the assessment on April 19, 2013, almost three (3) years after the receipt of the FAN on September 17, 2010 as per Registry Return Receipt,[55] respondent submits that petitioner failed to comply with Section 228 of the NIRC, and effectively prevented this Court from acquiring jurisdiction over this Petition for Review.[56]

THE RULING OF THE COURT

Warrant of Distraint and/or Levy is invalid

Before any revenue officer can conduct an examination or assessment, a Letter of Authority ("LOA") must be issued to give authority to the appropriate revenue officer assigned to perform assessment functions. The LOA empowers or enables said revenue officer to examine the books of accounts and other accounting

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[51] CTA Docket, p. 610.
[52] CTA Docket, p. 202.
[53] CTA Docket, p. 203.
[54] CTA Docket, p. 205.
[55] Exhibit "R-13", BIR Records, p. 18.
[56] CTA Docket, p. 206.

records of a taxpayer for the purpose of collecting the correct amount of tax.[57] In the absence of such an authority, the assessment or examination is a nullity.[58] Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, examine taxpayers within the jurisdiction of the district** in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."(Emphases supplied)

On the other hand, Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner on which tax deficiency assessments should be issued, *viz.*:

> "SEC. 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:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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[57] Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.
[58] Id.

> **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 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.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

To implement the provisions of Section 228 of the NIRC of 1997, as amended, RR No. 12-99 was issued. It provides that after audit of a taxpayer's books of accounts and other accounting records, the BIR shall send the taxpayer a Notice for Informal Conference, inviting the taxpayer to a meeting to discuss the examiner's preliminary findings. The BIR shall proceed to send a Preliminary Assessment Notice and eventually a Final Assessment Notice and Formal Letter of Demand to the taxpayer to inform him that he is liable for deficiency taxes and the facts and the law upon which the assessment was made.

Section 3 of RR No. 12-99 provides:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.—
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 Notice for informal conference.—The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted

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report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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.

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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.

If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof."

Sections 3.1.2 and 3.1.4 of RR No. 12-99 provide that service of the PAN/FAN to the taxpayer may be made by registered mail. It is settled in our jurisprudence that if the assessment notice is served by registered mail, and the original was not returned to the BIR, the presumption is that the taxpayer received said assessment notice in the regular course of mail, pursuant to Section 3 (v), Rule 131 of the Rules of Court, which provides as follows:

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

The facts to be proven in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail.[59]

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,*[60] however, the Supreme Court ruled that while a mailed letter is deemed received by the addressee in the ordinary course of mail, this remains 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, thus:

> "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)

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[59] Gonzalo P. Nava vs. Commissioner of Internal Revenue, G.R. No. L-19470, January 30, 1965.
[60] G.R. No. 157064, August 7, 2006, citing Protector's Services, Inc. vs. Court of Appeals, 386 Phil. 611, 623 (2000).

In the case at bar, petitioner denies receipt of the LOA, Notice for Informal Conference, PAN and FAN, which if true would make the assessment, including the WDL void.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[61] the Supreme Court enunciated that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is tantamount to denial of due process.

Moreover, in *Commissioner of Internal Revenue vs. BASF Coating + Inks Phil., Inc.*,[62] the Supreme Court held that the CTA is correct in holding that the FAN never attained finality because respondent never received it, either actually or constructively.

A careful perusal of the LOA and Notice for Informal Conference sent to petitioner by respondent through personal service, shows that said documents were signed and received by a certain Mr. Benitez. According to petitioner, Mr. Benitez is an operations staff member who is not authorized to receive such documents on behalf of petitioner. Furthermore, petitioner claims that Mr. Benitez, who resigned in March 2010, did not forward the said notices and assessments to petitioner or to any of its authorized agents. This was testified to by Ms. Nely G. Legaspi, petitioner's General Manager on direct examination by way of Judicial Affidavit[63] which she identified during the May 17, 2013 hearing, as follows:

> "9. Q: I am showing to you a document entitled Letter of Authority dated January 12, 2010, is this the same document you referred to?
>
> A: Yes that is the same document.
>
> (Counsel's manifestation: For purposes of the record, counsel marks the Letter of Authority, dated January 12, 2010, as Exhibit B)
>
> 10. Q: I am showing to you a document entitled Notice for Informal Conference, dated January 12, 2010. Is this the same document you referred to?
>
> A: Yes, that is the same document.

[61] G.R. No. 185371, December 8, 2010.
[62] G.R. No. 198677, November 26, 2014.
[63] CTA Docket, pp. 47-79.

(Counsel's manifestation: For purposes of the record, counsel marks the Notice for Informal Conference, dated January 12, 2010, as Exhibit C)

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13. Q: You mentioned that the BIR officers told you that your company received these documents before. Why did they say this?

A: They said that the notices were sent to our office and received by a Mr. Benitez.

14. Q: Who is Mr. Benitez?

A: **Mr. Benitez was a former employee of our company. He left the company in March of 2010. If you take a look the Final Notice Before Seizure and the Letter of Authority, there are signatures there of Mr. Benitez showing that he received the documents on January 12, 2010.**

15. Q: If that is true, then why did you say that you never saw these documents before?

A: **Because that is the truth, I never saw these documents before. First of all, Mr. Benitez was not authorized by the company to receive notices. He was definitely not authorized to receive notices from the BIR or from anyone at all. He was just an operations staff member. He was a low ranking employee. The ones authorized in our company to receive these notices are the designated members of our accounting staff. Or it could have been given to me, since I am the General Manager, or to the Finance Head, but not to a member of the operations staff who is not authorized. I don't know if Mr. Benitez really received the documents, but if he did, besides being unauthorized, he also never gave these documents to the company**."[64] (Emphasis supplied)

There being no evidence to the contrary, and giving credence to Ms. Legaspi's testimony, the Court finds that the LOA and Notice for Informal Conference were not received by the taxpayer's authorized representative, and therefore cannot be said to have been duly received by the taxpayer itself.

With regard to the PAN and FAN, petitioner also denies receipt of the same, albeit respondent claims they have been sent through registered mail.

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[64] CTA Docket, pp. 50-51.

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Respondent insists that it sent the PAN dated March 29, 2010 by registered mail on April 6, 2010 and that it was received by petitioner on June 23, 2010 as evidenced by the **Registry Return Receipt No. 5187**. Respondent also claims that the FAN dated July 20, 2010 was sent by registered mail on September 9, 2010 and was received by petitioner on September 17, 2010, as evidenced by **Registry Return Receipt No. 2581**.[65]

Respondent presented Revenue Officer, Mr. Joseph V. Galicia, who duly identified the Registry Return Receipts, and on direct examination by way of Judicial Affidavit,[66] testified that he personally instructed the preparation and sending of the PAN and FAN through registered mail, to wit:

> "Q12: After the Letter of Authority and Notice for Informal Conference were served to the taxpayer, what happened next?
>
> A12: The taxpayer did not reply to the notice, hence a preliminary assessment notice dated 29 March 2010 was sent through registered mail at the taxpayer's registered address.
>
> Q13: Do you have proof that you mailed this preliminary assessment notice?
>
> A13: Yes, it was mailed on 4 June 2010 through registered mail and was received by the addressee on 23 June 2010 as manifested on the registry return receipt.
>
> Q14: I am showing you a document denominated as a Registry Return Receipt indicating T-Shuttle Service, Inc. as the addressee to be marked as Exhibit "R-11" for the respondent. What is the relation of this document to the service that you are referring to?
>
> A14: That is the Registry Return Receipt evincing service of the Preliminary Assessment Notice issued to petitioner and released for service upon my order.
>
> Q15: You mentioned that a PAN was sent to petitioner, I am showing you a document denominated as Preliminary Assessment Notice dated 29 March 2010, to be marked as Exhibit "R-12", for the respondent. What is the relation of this document to the PAN which you mentioned earlier?
>
> A15: This is the Preliminary Assessment Notice dated 29 March 2010 that I mentioned earlier.

[65] CTA Docket, p. 202.
[66] Exhibit "R-15", CTA Docket, p. 491.

Q16: After the PAN was issued, what happened next?

A16: Despite notice the taxpayer did not file its protest to the PAN.

Q17: What did you do next if any?

A17: I recommended the issuance of the Final Assessment Notice.

Q18: What happened next after the FAN was issued?

A18: After approval of the FAN by the Commissioner of Internal Revenue the same was sent by registered mail.

Q19: Do you have proof that the FAN was sent and received by the petitioner?

A19: Yes, I instructed the mailing of the FAN through registered mail on 9 September 2010 and the same was received by the addressee on 17 September 2010 as manifested on the registry return receipt.

Q20: I am showing you a document denominated as a Registry Return Receipt indicating T-Shuttle Service, Inc. as the addressee to be marked as Exhibit "R-13" for the respondent. What is the relation of this document to the service that you are referring to?

A20: That is the Registry Return Receipt evincing service of the Final Assessment Notice issued to petitioner and released for service upon my order.

Q21: You mentioned that a FAN was sent to petitioner, I am showing you a document denominated as Final Assessment Notice dated 20 July 2010, to be marked as Exhibit "R-14", for the respondent. What is the relation of this document to the FAN which you have mentioned earlier?

A21: This is the FAN that I mentioned earlier."[67]

During cross-examination, however, although Mr. Galicia confirmed that the PAN and FAN were sent to petitioner by registered mail, he admitted that **he was uncertain as to whether the PAN and FAN were actually received by petitioner**,[68] to wit:

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[67] CTA Docket, pp. 494-495.
[68] TSN dated April 7, 2015, pp. 14-16.

Atty. Castillo:

Q: Mr. Witness, you testified in your Judicial Affidavit that the Preliminary Assessment Notice was mailed through Registered Mail and received by the addressee on June 23, 2010. Is this correct?

Mr. Galicia:

A: Yes, Attorney.

Atty. Castillo:

Okay.

Q: Do you know who actually received the Preliminary Assessment Notice?

Mr. Galicia:

A: Actually no, Attorney, because it was the, (interrupted).

Justice Uy:

Can you flash the document in the projector?

Justice Del Rosario:

The registry receipt, please.

Atty. Castillo:

Q: Mr. Witness, I asked if you know the person who received the Preliminary Assessment Notice which was sent by mail?

Mr. Galicia:

A: I don't know personally.

xxx xxx xxx

Atty. Castillo.

Ah, that's enough, thank you.

Q: You also testified that the Final Assessment Notice was likewise sent by Registered Mail on September 9, 2010, and it was also received by the addressee. Is this correct?

Mr. Galicia:

A: Yes, Attorney.

Atty. Castillo:

> Q: Do you know the person who received this Final Assessment Notice?
>
> Mr. Galicia:
>
> A: The same, Sir, I don't."

In *Barcelon*, 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.[69]

Thus, it is not simply a question of whether the PAN and FAN were sent to petitioner, but it is imperative that the taxpayer **actually received** said tax assessment notices. In this case, Mr. Galicia admitted to having no personal knowledge of whether petitioner actually received the PAN and FAN. Rather, Mr. Galicia referred to the Registry Return Receipts as proof that the PAN and FAN reached petitioner.

Perusal of the records and of Registry Return Receipt No. 5187 and Registry Return Receipt No. 2581, however, shows that the signatures therein are unidentified and unauthenticated. It was not established whether such signatures indeed belong to petitioner's authorized representative. Stated otherwise, the identity and authority of the person whose signature appears on the registry return receipts were not established.

The Court has been consistent in its ruling that registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail.[70] 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.

In *Ting vs. Court of Appeals*,[71] the Supreme Court held:

> "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

[69] Supra, note 61.
[70] Suarez vs. People, G.R. No. 172573, June 19, 2008.
[71] G.R. No. 140665, November 13, 2000.

> 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 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. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter.**" (Emphases supplied)

Moreover, pursuant to Section 13, Rule 13 of the 1997 Rules on Civil Procedure, it is the registry receipt issued by the mailing office **and** the affidavit of the person who mailed the letter that proves service made through registered mail. This was reiterated in *Republic of the Philippines vs. Resins, Incorporated,*[72] *viz.*:

> "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 on Civil Procedure.
>
> xxx xxx xxx
>
> OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail and that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. **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. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that**

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[72] G.R. No. 175891, January 12, 2011.

> **service by registered mail may be deemed completed. 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.**
>
> xxx xxx xxx
>
> While we concede that there may be a presumption of regularity, in the ordinary course of events, that the RTC Clerk of Court sent the 17 March 1993 Judgment to the OSG, such presumption should fail when the OSG itself denies receipt. **When the service of the judgment is questioned, such as in the present case, there is a need to present both the registry receipt issued by the mailing office and the affidavit of the person mailing.** Since the OSG presented proof of non-receipt, it became incumbent upon Resins, Inc. to prove receipt, which Resins, Inc. failed to do." (Emphases supplied)

Although the Court frowns upon petitioner's bare blanket denial of receipt of any of the notices, it was, however, incumbent upon respondents to provide sufficient evidence to prove that the PAN and FAN were actually received by petitioner. This respondent failed to do.

Again, in *Estate of the Late Juliana Diez Vda. de Gabriel vs. Commissioner of Internal Revenue*,[73] the Supreme Court reiterated its pronouncement that due process requires that the assessment must be **served on and received** by the taxpayer, *viz*:

> "(D)ue process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. **To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer**." (Emphasis supplied)

Here, in view of respondent's failure to prove that the PAN and FAN were properly and duly served upon and received by petitioner,

[73] G.R. No. 155541, January 27, 2004.

the assessments made against petitioner for deficiency income tax and VAT for calendar year 2007 are void for failure to accord petitioner due process in the issuance thereof. Accordingly, there being no final and valid assessment to begin with, petitioner cannot be considered a delinquent taxpayer. As such, the WDL issued by respondent to petitioner, in so far as it seeks to collect from petitioner the aforesaid delinquent income tax and VAT for calendar year 2007 is void.

Considering that the subject deficiency income tax and VAT assessments and the corresponding WDL issued against petitioner are void, the Court is left with no recourse but to cancel and set them aside.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Final Assessment Notice dated July 20, 2010, and its attached Assessment Notice No. F-057-LNTF-07-IT-002 dated July 20, 2010 assessing petitioner for deficiency income tax of ₱5,305,486.50 and Assessment Notice No. F-057-LNTF-07-VT-002 dated July 20, 2010 assessing petitioner for deficiency VAT of ₱3,720,488.73, or a total of ₱9,025,975.23, for calendar year 2007 and the Warrant of Distraint and/or Levy No. 057-03-13-074-12 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice