REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, REVENUE DISTRICT OFFICER (RDO), COLLECTION OFFICERS OF REVENUE DISTRICT OFFICE 57 (RDO-57) BIÑAN and SAN PEDRO LAGUNA,
Petitioners,

- versus -

T SHUTTLE SERVICES, INC.,
Respondent.

CTA EB NO. 1565
(CTA Case No. 8650)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

APR 03 2018 3:37 p.m.

x- x

DECISION

Fabon-Victorino, J.:

In this *Petition for Review*[1] filed on December 20, 2016, petitioners Commissioner of Internal Revenue (CIR), Revenue District Officer, and Collection Officers of Revenue District Office (RDO) 57 Binan and San Pedro, Laguna, assail the Decision[2] dated August 30, 2013 promulgated by the Court in Division in CTA Case No. 8650, which granted the *Petition for Review* of respondent T Shuttle Services, Inc. and ordered the cancellation and setting aside of the Final Assessment Notice dated July 20, 2010 and the *Warrant of*

[1] *En Banc* docket, pp. 6-14.
[2] *En Banc* docket, pp. 18-39.

Distraint and/or Levy with No. 057-03-13-074-12, issued against respondent for calendar year (CY) 2007.

Petitioners likewise assail the Resolution [3] dated November 16, 2016, which denied their *Motion for Reconsideration* of the adverse Decision, for lack of merit.

THE FACTS AND THE PROCEEDINGS

The unrefuted facts are as follows.

Petitioners are the officers of the Bureau of Internal Revenue (BIR), who denied the protest filed by respondent against the Final Notice Before Seizure and thereafter issued the similarly assailed *Warrant of Distraint and/or Levy* No. 057-03-13-074-12. Petitioner CIR may be served with summons and other court processes at the BIR National Office Building, BIR Road, Diliman, Quezon City, while the two other petitioners, at BIR District Office No. 57, Biñan, Laguna.

Respondent, on the other hand, is a domestic corporation with principal address at Southplains I, Brgy. Sto. Tomas, Biñan, Laguna. It is a common carrier, providing transportation services for its various clients.

On July 15, 2009, petitioner CIR issued a Letter Notice (LN) No. 057-RLF-07-00-00047[4] informing respondent of the discrepancy found after comparing the Reconciliation of Listing for Enforcement (RELIEF) and Third-Party Matching under the Tax Reconciliation System (TRS), with the tax returns filed by respondent for CY 2007. The LN was received and signed by a certain Malou Bohol on July 24, 2009.

The BIR, through LN Task Force Head Salina B. Marinduque, issued to respondent a Follow-Up Letter dated August 24, 2009, which was received and signed by a certain Amado Ramos.[5]

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[3] *En Banc* docket, pp. 40-43.
[4] Exhibit R-8, BIR Record, p. 5.
[5] BIR Record, p. 6.

In the absence of any action from respondent, a Letter of Authority (LOA) No. 2008 00044533[6] for the examination of respondent's book of accounts and other accounting records and a Notice for Informal Conference[7] (NIC), were issued against respondent on January 12, 2010. Both were received by a certain B. Benitez on even date.

On March 29, 2010, petitioner CIR issued a Preliminary Assessment Notice [8] (PAN), with attached Details of Discrepancies, finding respondent liable for deficiency income tax (IT) and value-added tax (VAT) in the aggregate amount of ₱6,485,579.49.

On July 20, 2010, petitioner CIR issued the Final Assessment Notice[9] (FAN) with attached Assessment Notice Nos. F-057-LNTF-07-VT-002 and F-057-LNTF-07-IT-002 (FAN), assessing respondent of deficiency VAT and IT, as follows:

I. DEFICIENCY VALUE ADDED TAX	
Discrepancy per Letter Notice (Sales)	₱15,478,710.74
Multiply by VAT Rate	12%
Deficiency VAT	P1,857,445.20
Add: 50% Surcharge	928,722.60
20% interest p.a. up to (7/31/2010)	934,320.93
TOTAL AMOUNT DUE	**₱3,720,488.73**
II. DEFICIENCY INCOME TAX	
Net Taxable Income per Annual ITR filed	₱ -
Add: Additional Gross Income (Figure 1)	7,739,355.00
Total Taxable Income	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	**₱5,305,486.50**

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

[6] Exhibit R-9, BIR Record, p. 16.
[7] Exhibit R-10. BIR Record, p. 13.
[8] Exhibit R-12, BIR Record, pp. 24-29.
[9] Exhibit R-14, BIR Record, pp. 30-32.
[10] Exhibit R-2, BIR Record, p. 38.

On January 23, 2013, petitioner RDO issued a Final Notice Before Seizure[11] (FNBS) giving respondent the last opportunity to settle its tax liability within ten (10) days from notice, otherwise, petitioner RDO would enforce collection through summary remedies under the Tax Code, and/or to refer the case to the Legal Division for judicial action.

On March 20, 2013, respondent, through its counsel, sent a letter[12] to petitioners RDO and Collection Officers stating that: (1) it is not aware of any pending liabilities for CY 2007; (2) Mr. B. Benitez, who signed and received the preliminary notices, was a disgruntled rank and file employee not authorized to receive the alleged notices; and (3) Mr. B. Benitez did not forward the said notices to it. In the same letter, respondent requested for a grace period of one (1) month to review its documents which petitioner RDO denied in a letter[13] dated April 2, 2013.

Thus, on April 19, 2013, respondent protested[14] the FNBS claiming that it is not liable for any deficiency IT for CY 2007; it is exempt from payment of VAT being a common carrier; the service of the NIC was invalid; and it did not receive the PAN and FAN prior to the issuance of the FNBS.

On April 23, 2013, Warrant of Distraint and/or Levy No. 057-03-13-074-R [15] (WDL) was constructively served to respondent.

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

In his *Answer*[17] dated August 22, 2013, petitioner CIR prayed for the denial of the Petition for Review arguing that: (1) no error or illegality can be ascribed to his assessment

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[11] Exhibit R-3, BIR Record, p. 39.
[12] Exhibit R-4, BIR Record, pp. 41-42.
[13] Exhibit R-5, BIR Record, p. 45.
[14] Exhibit G, Rollo, pp. 70-76.
[15] Exhibit R-6, BIR Record, p.71.
[16] Rollo, pp. 6-22.
[17] Rollo, pp.200-2016.

for deficiency tax liability as due process was observed; (2) respondent failed to interpose a timely protest against the FAN and to submit within the prescribed period of sixty (60) days supporting documents to refute the findings of the revenue examiners; (3) respondent is liable for deficiency IT and deficiency VAT; and (4) the presumption of the propriety and exactness of tax assessments is in his favor.

During the trial, petitioners and respondent presented evidence in support of their respective positions.

On August 30, 2016, the Court in Division promulgated the assailed Decision, the dispositive portion of which reads:

> **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 [respondent] for deficiency income tax of ₱5,305,486.50 and Assessment Notice No. F-057-LNTF-07-VT-002 dated July 20, 2010 assessing [respondent] 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**.

The Court in Division explained that the assessments made against respondent for deficiency IT and deficiency VAT for CY 2007 are void as respondent was not accorded due process in the issuance the PAN and the FAN. Petitioners failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent.

Aggrieved, petitioners moved for the reconsideration of the adverse ruling but it was denied in the equally assailed Resolution of November 16, 2016.

Hence, the instant Petition for Review filed on December 20, 2016, raising the lone issue as follows:

> WHETHER THE FIRST DIVISION OF THE CTA ERRED IN GRANTING RESPONDENT'S PETITION FOR REVIEW CANCELLING AND WITHDRAWING PETITIONER'S ASSESSMENT FOR DEFICIENCY INCOME TAX AND VAT AND EXPANDED WITHHOLDING TAX (EWT) IN THE AGRREGATE AMOUNT OF NINE MILLION TWENTY-FIVE THOUSAND NINE HUNDRED SEVENTY-FIVE PESOS AND 23/100 (₱9,025,975.23) FOR TAXABLE YEAR 2007.

Petitioners assert that all the notices, *i.e.*, LOA, NIC, PAN and FAN were duly received upon respondent through registered mail as shown in the Registry Return Receipt No. 5187 and Registry Return Receipt No. 2581. Although the presumption that mail matters are deemed received in the ordinary course of mail is disputable, it should not be destroyed by bare allegations that the notices were not received at all. For to allow it would enable taxpayers to unilaterally avoid assessments by simply denying receipt thereof.

Moreover, service of BIR notices through registered mail is authorized under the NIRC of 1997 and other relevant rules and regulations. Besides, the lack of trust in in the service of notices through the Philippine Postal Service would not only add unnecessary burden on revenue officials but would as well negate the basic principle behind the presumption of regularity of service of notice through mail under our laws.

By way of *Comment/Opposition*[18] filed on February 9, 2017, respondent submits that the arguments in the instant *Petition for Review* are but a mere rehash of petitioners' arguments raised in their previous pleadings, which have already been passed upon and discussed by the Court in Division in the assailed Decision of August 30, 2016 and Resolution of November 16, 2016. Again respondent denies

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[18] *En Banc* docket, pp. 51-65.

receipt of the LOA, NIC, PAN, and FAN, through its authorized representatives.

Respondent agrees with the Court in Division that since the LOA and the NIC were admittedly received by a staff who was not authorized to receive them, they cannot be deemed duly received by respondent.

Respondent is also in agreement with the Court in Division in its ruling that petitioners failed to adduce sufficient evidence to prove its actual receipt of the PAN and FAN. In the absence of sufficient evidence that the signature appearing in the registry return receipts is that of respondent's authorized representative, petitioners' claim cannot be given weight and credence. In addition, the registry return receipts standing alone is not sufficient to prove receipt of notices by respondent as they still need authentication.

In closing, respondent submits that the Court in Division correctly ruled that the deficiency assessments for IT and VAT are void for petitioners' failure to accord respondent due process in the issuance of the subject assessment notices.

On February 23, 2017, the Court *En Banc* gave due course to the instant *Petition for Review* and required the parties to submit their respective Memoranda within thirty (30) days from notice.[19]

With the filing of their respective *Memoranda*, the instant *Petition for Review* was submitted for decision on May 10, 2017.[20]

RULING OF THE COURT *EN BANC*

The instant *Petition for Review* must fail.

[19] Resolution, *En Banc* docket, pp. 69-70.
[20] Resolution, *En Banc* docket, pp. 103-104.

Irrefragably, all the arguments raised by petitioners in their main pleading show that they were the very same flawed arguments found in their earlier *Answer* and *Motion for Reconsideration* filed with the Court in Division which had been thoroughly discussed and passed upon in the assailed Decision of August 30, 2016 and Resolution of November 16, 2016. Be that as it may, and if only to reinforce the findings of the Court in Division, the salient points in its disquisition shall be discussed anew.

The crux of the controversy is the alleged receipt of the assessment notices by respondent which the latter denies wailing deprivation of due process on their part rendering the said notices invalid. Thus, the Court *En Banc* shall focus its discussion on the service and receipt of these documents as this will determine whether petitioner was indeed not accorded due process required in the issuance of assessment notices.

The indispensability of affording taxpayers sufficient written notice of their liability is a clear definite requirement. [21] Section 228 of the NIRC of 1997, as amended, specifically states that a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. The pertinent portions of Section 228 read:

> 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:
>
> 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.**

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[21] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016.

> 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. xxx

To implement Section 228 of the NIRC of 1997, as amended, Revenue Regulations (RR) No. 12-99 was issued echoing the requirement that taxpayers must be informed in writing of the law and the facts on which their tax liability was based, to wit:

> 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 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.

xxx xxx xxx

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.

Relevantly, Sections 3.1.2 and 3.1.4 of RR No. 12-99 provide that service of the PAN/FAN to the taxpayers 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 the said assessment notice in the regular course of mail, pursuant to Section 3 (v), Rule 131 of the Rules of Court, which states 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.

However, in the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[22] citing the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[23] the Supreme Court, in no uncertain terms, ruled that presumption that the notice was received in the regular course of mail is disputable subject to controversion and

[22] G. R. No. 185371, December 8, 2010.
[23] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.

direct denial thereof shifting the burden to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee. The pertinent portion of the jurisprudence reads as follows:

> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that **while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. Thus, as held by the *Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue*:
>
> > "The facts to be proved 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. But if one of the said facts fails to appear, the presumption does not lie."
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> . . . . What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents

> cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:
>
>> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." (*Citations omitted, emphasis supplied*).

Clearly, the presumption in favor of receipt of mail by the addressee can be disputed and overturned by sufficient evidence to the contrary by the party against whom the presumption is made. If this occur, the party who enjoys the presumption must prove that the mailed letter was indeed received by the addressee.

In the case at bar, respondent categorically denied receipt of the subject PAN and FAN sent through registered mail. It was therefore incumbent upon petitioners to prove that the mailed assessment notices were indeed received by respondent, or at the very least, by its authorized representative.

To prove that the PAN and FAN were received by respondent, petitioners presented in evidence Registry Return Receipt No. 5187 and Registry Return Receipt No. 2581, respectively.[24] Petitioners likewise presented Revenue Officer Joseph V. Galicia. He identified the cited Registry Return Receipts and testified that he personally instructed the preparation and sending of the PAN and FAN through registered mail.[25]

However, the presentation of the Registry Return Receipts is not sufficient to prove that respondent actually received the PAN and FAN. It must be signed by the addressee or the recipient and must be authenticated to establish that the person who signed the Registry Return Receipt was the duly authorized representative of respondent.

In the instant case, the witnesses of petitioners failed to identify and authenticate the signatures appearing on Registry Return Receipt No. 5187 and Registry Return Receipt No. 2581. Thus, it cannot be said with certainty that the signatures appearing in the said documents were those of respondent's authorized representatives. In fact, this was confirmed by witness Galicia who **admitted during cross examination that he was uncertain whether the PAN and FAN were <u>actually received</u> by respondent.**[26]

Registry Return Receipts must be authenticated to serve as proof of receipt of letters sent through registered mail.[27] The ruling of the Supreme Court on the matter in the case of *Ting vs. Court of Appeals*,[28] is instructive, to wit:

> 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

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[24] *Rollo,* p. 202.
[25] Exhibit R-15, Rollo, p. 491.
[26] TSN dated April 7, 2015, pp. 14-16.
[27] *Suarez vs. People*, G.R. No. 172573, June 19, 2008.
[28] G.R. No. 140665, November 13, 2000.

> registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. **Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters**.
>
> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that [a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.
>
> **In the case at bar, no effort was made to show that the demand letter was received by 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. (*Boldfacing supplied*)

Thus, we are one with the Court in Division in its ruling that petitioners failed to prove that the PAN and FAN were properly and duly served upon and received by respondent, thus, the assessments made against respondent for deficiency IT and VAT for CY 2007 are void for failure to accord respondent due process in the issuance thereof.

On another note, even assuming that the PAN and FAN were properly and duly served upon and received by respondent, the deficiency income tax and VAT assessments issued against respondent for taxable year 2007 are still VOID.

A close examination of the FAN dated July 2010, as well as, the Assessment Notices attached thereto, reveal that **both failed to demand payment of the taxes due within a specific period.** The pertinent portion of the FAN dated July 20, 2010 is quoted hereunder for easy reference:

> Pursuant to the provisions of Sec. 228 of the NIRC of 1997 and its implementing Revenue Regulations, you are hereby given the opportunity to present in writing, your side of the case within 15 days from receipt hereof. **If we fail to hear from you within the said period, you shall be considered in default, in which case, a formal letter of demand and assessment notice shall be issued by this Office calling for payment of your aforesaid deficiency taxes, inclusive of the aforementioned civil penalties and interest.**" (*Emphasis supplied*)

Evidently, no express demand for payment of the taxes allegedly due within a **specified period** from the time the FAN was issued on July 20, 2010. The last paragraph of the FAN indicates that petitioners would still issue a formal letter of demand and assessment notice if respondent would fail to respond to the FAN within the given fifteen (15)-day period. Worse, the record is bereft of any indication that petitioners issued final demand for payment of the assessed amounts within a specific or definite period from notice.

Like the FAN, the attached Assessment Notices (one for IT and other for VAT) dated July 20, 2010 also **failed to prescribed a definite period for respondent to pay the alleged deficiency taxes.**

In the case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*[29] *(Pascor)* the Supreme Court unequivocally declared that ***"An***

[29] G.R. No. 128315, June 29, 1999.

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 and enabling the latter to determine his remedies therefor."*

Recently, the doctrine laid down in *Pascor* was echoed in the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*,[30] where the Supreme Court pronounced as follows:

> **The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects." **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice." A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.
>
> **A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein**

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[30] G.R. No. 215957, November 9, 2016.

> **within a specific period."** (*Citations omitted; Boldfacing supplied*)

Thus, for lack of a definite and categorical demand for payment of the assessed amount on or within a date certain, the FAN dated July 20, 2010 and the Assessment Notices attached thereto, are deemed void and without any legal consequence.

WHEREFORE, the *Petition for Review* filed by petitioners Commissioner of Internal Revenue, Revenue District Officer, and Collection Officers of Revenue District Office (RDO-57) Biñan and San Pedro Laguna, on December 20, 2016 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Dissenting Opinion)
CATHERINE T. MANAHAN
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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MANAHAN, *JJ.*

Promulgated:

APR 03 2018 3:37 p.m.

x - x

DISSENTING OPINION

MANAHAN, J.:

The majority is of the opinion that the petitioner failed to prove that the PAN and the FAN were properly and duly served and received by the respondent leading to the cancellation of the assessments for taxable year 2007 for being void and without any effect.

I register my dissent to the conclusion of my esteemed colleagues.

The facts of this case render it a welcome opportunity for this Court to analyze the nuances by which official notices such as tax assessments, final decisions on disputed assessments and other official correspondences from the government are deemed received by the concerned party to effectuate a valid service. It is no longer uncommon for a taxpayer to raise the defense of non-receipt of tax assessment notices to challenge their validity because if proven true, such will affect their right to due process enshrined in our Constitution and implemented by relevant laws and regulations.

The doctrine that the denial of receipt of an assessment notice (or any official notice for that matter) by the taxpayer shifts the burden of proof to the government officers to prove valid service is a wake-up call for the Court to analyze keenly the facts peculiar to each case and interpret the provisions of relevant laws on what may constitute valid service of official notices.

With the foregoing in mind, I proceeded to analyze the arguments of both parties and the letters which are now the subjects of dispute.

Petitioners assert that they have indeed submitted substantial proof that both the PAN and the FAN were received by respondent through registered mail as evidenced by Registry Return Receipt No. 5187 and Registry Receipt No. 2581. While they do acknowledge that it is a mere disputable presumption that a mailed letter is deemed received in the ordinary course of mail, such presumption should not be destroyed only by bare allegations that the notices were not received at all. Petitioners further claim that to admit plain allegations of not having received assessments unsupported by substantial evidence would enable taxpayers to unilaterally avoid the assessments easily by just denying receipt of such documents.

Respondent counters that all documents purportedly sent by petitioners, including the LOA, NIC, PAN and the FAN were not received by any of its authorized representatives. Beginning with the LOA and the NIC, respondent agrees with the findings of the Court in Division that since these were received by a staff member who was not authorized to receive the same then it cannot be fully confirmed that it has been duly received by the taxpayer.

I vote to rule in favor of petitioners.

The path through the thicket of this controversy ends with the basic issue of whether or not the petitioners validly served the PAN and the FAN to respondent or whether or not respondent received the said notices in fulfillment of the due process requirements.

The documents in question are the following:

1. Letter Notice (LN) No. 057-RLF-07-00-00047;

2. Notice for Informal Conference (NIC);

3. Preliminary Assessment Notice (PAN) dated March 29, 2010;

4. Final Assessment Notice (FAN) with attached Assessment Notice Nos. F-057-LNTF-07-IT-002.

As the PAN and the FAN are essential for determination of due process, my analysis focuses on the service and receipt of these two documents.

Respondent outrightly denies ever having received any of the aforementioned notices, particularly the PAN and the FAN purportedly issued by petitioners relative to the former's 2007 alleged tax liabilities.

In its denial, respondent belittles the registry receipts presented by petitioners to prove receipt because the signatures therein are both unidentified and unauthenticated. Respondents maintain that there are Supreme Court decisions to the effect that receipts for registered letters and return receipts are insufficient by themselves but must also be properly authenticated to serve as proper proof of service.

It would seem that respondent would like this Court to focus on the insufficiency of the registry receipts and the "unidentified and unauthenticated" signatures appearing therein.

While it is a well-entrenched rule that denial of the receipt of an assessment by the taxpayer shifts the burden of proving receipt upon the BIR, it is incumbent upon this Court to elucidate on the standards of proof satisfactory to contravene such denial and then apply such standards to the peculiar circumstances of each case.

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 I 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.

Section 3.1.2 Revenue Regulations (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." (italics ours)

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 I 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."* (italics ours)

The demands and consequences of prescription of actions or statute of limitations and the requirements of due process provided under various provisions of law be it administrative, civil or criminal, make it imperative for these same laws to equally allot certain provisions that would deem certain acts or events as being constitutive of complete and accomplished delivery of these official documents. In Section 3 (v) of Rule 131 of the Rules of Court, a disputable presumption is accorded to *mailed* letters in this way, 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;

Jurisprudence is replete with cases that emphasize that the above presumption is merely disputable and 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).[1] Note that such disputable presumption in Section 3 (v) of Rule 131 refers only to a situation when the letter or notice is sent via mail whether this be by *ordinary mail* or by *registered mail.*

The shift in the burden of proving completeness of service in the case of tax assessments served by registered mail proves to be interesting as there are various ways recognized by jurisprudence to dispel the denial and thereby prove complete service and receipt thereof by the taxpayer. But the legal benchmark in ascertaining what documents are considered competent to prove receipt should remain true to the standards provided under the Rules of Court specifically Section 13 of Rule 13, quoted below:

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

"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." (italics ours)

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.

I take 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 defined, a disputable presumption is that "species of evidence that may be accepted and acted on where there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence."[2]

As different from a "mere disputable presumption", the standards set forth in Section 13, Rule 131 are the types of evidence that are acceptable or 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

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[2] People vs. de Guzman, G.R. No. 106025, February 9, 1994.

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* [3] 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.*[4] 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."
>
> 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.* [5], 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:

> "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)

Of course, it cannot be gainsaid that the importance of the registry receipt and the registry return card rests on the supposition that the letter was mailed to the correct addressee and address as required under Section 7 of Rule 13, thus:

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[3] G.R. No. 140665, November 13, 2000.
[4] G.R. No. 175891, January 12, 2010.
[5] G.R. No, 202695, February 29, 2016.

> "Rule 13
>
> Section 7. Service by mail. – Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail."

Section 7 of Rule 13 contemplates service at the present address of the party and not to any other address of the party.[6]

As to the service of the PAN in the instant case, the petitioners presented in evidence the PAN issued against respondent with details of discrepancies dated March 29, 2010[7];the registry return receipt indicating T-Shuttle as the addressee [8]; and the Judicial Affidavit of Mr. Joseph Galicia[9] excerpts of his testimony are quoted as follows:

Q2- What position do you occupy in the BIR?

A2- I am Revenue Officer IV- Assessment

Q-13 – Do you have proof that you mailed this preliminary assessment notice?

A-13 – 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.

Q-14- 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 you are referring to?

A-14 – That is the Registry Return Receipt evincing service of the Preliminary Assessment Notice issued to petitioner and released for service upon my order.

Q-15 – 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

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[6] Spouses Belen et.al. vs. Carpio-Morales et.al, G.R. No. 175334, March 26, 2008.
[7] Exhibit "R-12".
[8] Exhibit "R-11".
[9] Exhibit R-15.

the relation of this document to the PAN which you have mentioned earlier.?

A-15 – This is the Preliminary Assessment Notice dated 29 March 2010 that I mentioned earlier?

As to the service of the FAN, petitioners presented in evidence the FAN with Details of Discrepancies dated 20 July 2010[10]; Registry Return Receipt indicating T-Shuttle Service, Inc. as the addressee[11]. Similar to the PAN, the service of the FAN to respondent was testified to by Mr. Joseph V. Galicia in his Judicial Affidavit, excerpts of which are provided below:

Q-19 – Do you have proof that the FAN was sent and received by the petitioner?

A-19 – 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.

I hold that the evidence presented by petitioners during trial is sufficient to establish completed service pursuant to Section 13 of Rule 13 of the Rules of Court which effectively contravenes the assertion of respondent that it did not receive the documents sent by petitioners, more particularly the PAN and the FAN. It is worthy to note that respondents did not dispute the correctness of the address indicated in the PAN and the FAN but focused their supposed ignorance on the lack of authority of the recipient or the person to whom the PAN and the FAN were served. Respondent described the recipient as a "disgruntled employee" and a "low ranking employee" and maintains that it is the designated members of their accounting staff who are authorized to receive official notices.

I am not convinced.

In the face of a denial of receipt of notices from the government, the Rules of Court in Section 13 of Rule 13 provides the type and degree of proof to rebut such denial constitutive of completed service. To impose any other burden on the government officers/officials serving notices by registered mail to the correct address and addressee is to negate the very purpose of sending notices via the postal system i.e. to avail of efficient and reliable service. It will also be against the rules of fair play if the revenue officials will be

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[10] Exhibit "R-14."

[11] Exhibit "R-13".

required to prove that each and every registered mail sent by them are received by an authorized representative, thus the Rules of Court do not have any provision to this effect. The case cited by the respondent entitled *Estate of the Late Juliana Diez vda. De Gabriel vs. CIR*[12] to prove that the notice must be sent to the taxpayer and not to a disinterested party is not applicable to the instant case because the fatal flaw in said notice was not that it was sent to an unauthorized person located in the taxpayer's address but was sent to a totally disinterested party hence was rendered defective.

There can be no quarrel that the addressees of any official notices may raise the defense of lack of authority or were sent to the wrong recipient but I humbly believe that it is their move to prove such allegation. Under the Rules, it is the duty of a party to present evidence on the facts necessary to establish his defense by the amount of evidence required by law (Section 1 of Rule 131). The burden of evidence in this situation may be likened to a game of chess where one party's move impels the other party to respond by a corresponding move.

Jurisprudence has settled that denial of receipt of mail matter shifts the burden on the party alleging that such notice was served. When such party presents evidence of completed service to dispute the denial under Section 13 of Rule 13, any other defense to disprove said completed service shifts the burden on the party alleging the same. In this case, it was the respondent who had the obligation to prove that the recipient who was at the address indicated in the registered mail is not authorized to receive it and to pinpoint the person or persons who are so authorized. Unfortunately, the respondent failed to discharge this burden. There is always the possibility that taxpayers will deny the authority of the person receiving official notices but in doing so they have the burden of disputing the same in the face of a legal presumption that official duty has been regularly performed.

In the case of *Land Bank of the Philippines vs. Heirs of Fernando Alsua*[13], the Supreme Court expounded on the authority of persons receiving notices by registered mail in this manner:

[12] G.R. No. 155541, January 27, 2004.
[13] G.R. No. 167361, April 2, 2007.

> "All that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the same to addressee himself or to a person of sufficient discretion to receive the same.
>
> Thus, in prior cases, a housemaid or a bookkeeper of the company, or a clerk who was not even authorized to receive papers on behalf of its employer, was considered within the scope of a person of sufficient discretion to receive the registered mail. *The paramount consideration is that the registered mail is delivered to the recipient's address and received by a person who would be able to appreciate the importance of the papers delivered to him,* even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney." (italics ours)

Further, the Supreme Court in the case of *Scenarios, Inc. and/or Rhotziv Bago vs. Jelly Vinluan*[14], stressed the importance of proving by competent evidence that notices have not been received, and we quote, thus:

> "The constitutional requirement of due process exacts that service be such as may be reasonably be expected to give the notice desired. Petitioners' bare assertion that the notices had not been received requires substantiation by competent evidence, as mere allegations is neither equivalent to proof nor evidence."

While I have no intention to deviate from the well-settled rule that denial of an assessment notice shifts the burden to the party serving the notice, I maintain that the issue should be resolved in a circumspect manner taking into consideration the peculiarities of each case presented before us and always in the light of the applicable laws and rules of evidence.

Would it not be a dangerous precedent to accept as gospel truth the claims of addressees/taxpayers that the person or persons lacked authority without requiring them to support this allegation with substantial proof? It is indeed easy to concoct non-receipt. It will open up the floodgates and allow unscrupulous taxpayers to simply ignore the service of assessment notices or worse, let "unauthorized" employees or even household members to receive assessment notices and later on raise this as a defense to avoid the consequences of being assessed of tax deficiencies.

[14] G.R. No 173283, September 17, 2008.

WHEREFORE, in light of the foregoing considerations, I vote to **GRANT** the Petition and **SET ASIDE** the Decision promulgated by the First Division on August 30, 2016 and the Resolution dated November 16, 2016.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice