REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1551** (CTA Case No. 8689)
- versus -	Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
ITHIEL CORPORATION, Respondent.	Promulgated: APR 12 2018 10:55 a.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration filed through registered mail on December 18, 2017, with respondent's Comment/Opposition (to Petitioner's Motion for Reconsideration dated 18 December 2017) filed on February 20, 2018.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the CTA 3rd Division's Decision dated July 4, 2016 and the Resolution dated October 18, 2016 are **AFFIRMED**.

SO ORDERED."[1]

In his Motion for Reconsideration, petitioner raised that the judicial claim of respondent was filed out of time. He asserts that respondent allegedly received the Final Decision on Disputed Assessment (FDDA) on June 5, 2013 through personal service, thus:

> "Based on the records of this case, it is worth noting that on **June 5, 2013, respondent received the Final Decision on Disputed Assessment (FDDA)** dated May 31, 2013 (Exhibit 'R-9'). Respondent cannot escape liability by simply denying that the security guard on duty who received the FDDA has no authority to accept the same. As a matter of fact, Mr. Florencio Flores, the security guard who received the FDDA was the **same person who received the other notices issued by the BIR** such as the PAN (Exhibit 'R-3'), Letter dated October 20, 2011 (Exhibit 'R-2') and the Letter dated July 18, 2012 (Exhibit 'R-7'). Moreover, during the cross examination of GS Liza Dimaya and RO Florentino Guarino III, they admitted that the copy of the said Notices or Letters were given to Mr. Florencio Flores because they were not allowed to enter the business premises of the respondent.
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> xxx In fine, **respondent only had until July 5, 2013** or thirty (30) days from June 5, 2013 within which to elevate its appeal directly to this Honorable Court, or to the Commissioner of Internal Revenue.
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> **When this Petition was filed on August 8, 2013 or sixty-four (64) days after the receipt of the FDDA on June 5, 2013, it was clearly beyond the thirty (30) day period allowed by law.** Accordingly, the subject deficiency tax assessments of respondent for taxable 2006 had already become final, executory, demandable and unappealable. Hence, the Honorable Court has no jurisdiction to take cognizance of the case."[2]

On the other hand, respondent asserts that personal service and service through registered mail of the FDDA created confusion as to the reckoning period for filing its reply. As such, the circumstances violated its right to due

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[1] CTA *En Banc* Docket, p. 90.
[2] Petitioner's Motion for Reconsideration, Court En Banc Docket, pp. 108-109.

process. Further, respondent asserts that petitioner's right to assess had already prescribed.

After considering the issues raised by the parties, the Court *En Banc* resolves to deny the instant motion.

Prefatorily, the Court notes that respondent executed Waivers of the Defense of Prescription. Thus, it cannot be said that petitioner's right to assess had already prescribed.

The Court shall now proceed to determine the correct reckoning date of respondent's receipt of the FDDA. On the one hand, petitioner contends that the reckoning date of respondent's receipt of the FDDA should be on June 5, 2013 when personal service was made. On the other hand, respondent contends that the reckoning date thereof should be on July 13, 2013, when it received the FDDA through registered mail. The determination of the correct date of the FDDA's receipt is crucial in determining whether the CTA has jurisdiction to entertain the instant case.

Petitioner has the burden of proof to prove that the person who received the FDDA had authority to do so

Petitioner contends that respondent "cannot escape liability by simply denying that the security guard on duty who received the FDDA has no authority to accept the same". Meanwhile, respondent simply raised the defense that said security guard had no authority to receive the same. This averment by respondent is, essentially, a *negative averment* for which it is under no obligation to prove.

In *Ernesto Martin v. Hon. Court of Appeals and Manila Electric Company*,[3] the Supreme Court explained the concept of negative averment in relation to the latin maxim *Ei incumbit probatio qui dicit, non qui negat*, which means that "if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the defendant is under no obligation to prove his exception or defense."[4]

Applying the said legal maxim to the instant case, petitioner has the burden of proof to show that his representative properly served the subject FDDA through personal service, *i.e.*, to an authorized person to receive, or a person who has shown semblance of authority to receive. Should petitioner

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[3] G.R. No. 82248, January 30, 1992.
[4] Id., citing *Belen v. Belen*, 13 Phil. 202.

fail to show in a satisfactory manner the above factual premises, the Court *En Banc* may safely conclude that respondent is under no obligation to prove its exception, *i.e.*, that the security guard who received the FDDA had no authority to do so.

The receipt by the security guard of the notices and the FDDA issued by the BIR shows the repeated mistake or negligence of petitioner in delivering the BIR documents to the same wrong person

Petitioner presented evidence during trial that it was the same security guard who received the other notices issued by the BIR. Thus, petitioner wants to show this Court that there exists a pattern where respondent's security guard repeatedly received the notices and consequently, the FDDA, showing that he was armed with authority or he had semblance of authority to receive the said documents.

However, while it is on record that the same security guard received the various documents sent by respondent, the same factual premises created an impression contrary to what was sought to be proven by petitioner. In other words, the repeated receipt of the various documents by respondent's security guard does not prove that he had authority or semblance of authority to receive the same. Rather, it reflects the repeated mistake or negligence of petitioner's representative in sending the BIR documents to the same wrong person.

True, the same security guard may have received the subject notices and the FDDA. It may also be true that petitioner's representative was not permitted to enter respondent's premises. However, this cannot lead to a conclusion that said security guard already had the authority to receive the said documents. Considering the important nature of the subject BIR documents, it is incumbent upon petitioner's representative to at least verify the authority of the person who received these documents. Considerably, this is an essential part of the due process rights of respondent to be properly informed of the assessment.

Without proof of due receipt, *i.e.*, receipt by a person duly authorized to receive the BIR documents, the Court *En Banc* is constrained to conclude that petitioner failed to satisfactorily prove that it observed respondent's right to due process when it served the FDDA through personal service. Consequently, based on the above legal maxim, it is not incumbent upon respondent to prove that its security guard had no authority to receive the FDDA and other BIR documents. *[initials]*

Service through registered mail is the dominant mode of service in this case

In her separate concurring opinion, Associate Justice Catherine T. Manahan succinctly discussed that service through registered mail is the dominant mode of service which has the effect of superseding personal service, as follows:

> "The subsequent delivery of the FDDA via registered mail to the respondent a little over a month after the same FDDA was sent by personal delivery to the security guard found within the premises of the respondent's offices, is the dominant mode of service which has the effect of superseding the latter mode for the following reasons:
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> 1. Personal service of the FDDA to a security guard who is not an employee of respondent constitutes an invalid service as it was not served upon the taxpayer itself or to its authorized representative. The law and relevant regulations impose more stringent requirements when service is done through personal mode. When an official notice is served by *personal delivery*, **proof of completeness of service shall consist of a written admission of the party served, or the official return of the server or the party serving.** xxx
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> 2. In Revenue Regulations (RR) 12-99, service by personal delivery should be made upon the *taxpayer himself or his authorized representative who shall acknowledge receipt by signing his name, stating his designation and his authority to receive the same*. In Section 3.1.6 of RR 18-2013, which amended certain provisions of RR 12-99, the requirements for personal delivery of the FDDA are stricter – it must be served only to the party (taxpayer) at his registered or known address or wherever he may be found. Hence, *personal delivery* of the FDDA to a security guard found within the premises of the taxpayer's address is not a valid service.
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> 3. The decision of the Supreme Court which recognized the authority of security guards to receive official notices is confined to situations where the notice is served by registered mail, and we quote:
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>   "All that the rules of procedure require in regard to *service by registered mail* is to have the

postmaster deliver the same to the 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 the 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.

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In the instant case, the receipt by the security guard of the order of dismissal should be deemed receipt by petitioner's counsel as well."

In my view, the stringent requirements imposed by both the Rules of Court and pertinent revenue regulations on personal delivery of official notices stem from the 'unofficial' or 'informal nature' of such mode of service without the intervention of any government instrumentality such as the Philippine Postal Service thereby making personal service more prone or open to fraud. This is not to say, of course, that the Philippine Postal Service is not altogether foolproof, but the fact remains that certain safeguards are in place if delivery is made via registered mail and a firm 'official' paper trail is evident and available in this kind of service."

We agree with the exhaustive discussion of Associate Justice Manahan. Indeed, personal service requires more stringent rules than service through registered mail. Moreover, RR 12-99 requires that service by personal delivery should be made upon the taxpayer himself or his authorized representative who shall acknowledge receipt by signing his name, stating his designation and his authority to receive the same. Finally, it is apparent that the authority of security guards to receive official notices is confined to situations where the notice is served by registered mail.

Considering the foregoing, the Court *En Banc* rules that the FDDA was deemed received by respondent on July 13, 2013, when it was served through registered mail. Hence, the CTA has jurisdiction to entertain this case and as such, the dismissal of the instant motion is in order.

WHEREFORE, petitioner's Motion for Reconsideration is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

I maintain my Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice