REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LA FLOR DELA ISABELA, INC.,
Respondent.

CTA EB CASE NO. 1006
(CTA CASE NO. 8132)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

NOV 1 3 2014 4:20 p.m.

x -- x

DECISION

BAUTISTA, J:

The Case

This is a Petition for Review under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking the nullification of the Decision[1] dated September 25, 2012, by the 1st Division of the Honorable Court of Tax Appeals (CTA) and subsequent Resolution[2] dated April 5, 2013, by the same, on petitioner's (respondent in CTA

[1] Penned by Associate Justice Esperanza R. Fabon-Victorino, with former Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda Piñera-Uy concurring; *Rollo*, CTA EB Case No. 1006, pp. 24-58, *Annex* "A."

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Erlinda Piñera-Uy concurring; *Rollo*, CTA EB Case No. 1006, pp. 59-64, *Annex* "B."

Case No. 8132) Motion for Reconsideration in the case of *La Flor dela Isabela v. Commissioner of Internal Revenue*.[3]

The Parties[4]

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"), with office address at the BIR Building, Diliman, Quezon City.

Respondent La Flor Dela Isabela, Inc. ("La Flor") is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office address at KM 14 West Service Road, Paranaque City.

The Facts

As stated in the Decision dated September 25, 2012,[5] the factual antecedents of this case are as follows:

> "Petitioner[6] filed with the BIR its monthly expanded withholding tax returns for taxable year 2000 on the following dates, which cover the remittance of its monthly expanded withholding tax payments, thus:

PERIOD	DATE FILED
January	April 07, 2000
February	April 07, 2000
March	May 02, 2000
April	May 24, 2000
May	July 14, 2000
June	August 18, 2000
July	September 25, 2000
August	October 19, 2000
September	October 25, 2000
October	November 24, 2000
November	January 23, 2001
December	February 15, 2001

[3] *Rollo*, CTA EB Case No. 1006, p. 6.
[4] *Records*, CTA Case No. 8132, Joint Stipulation of Facts and Issues ("JSFI"), p. 100.
[5] *Rollo*, CTA EB Case No. 1006, pp. 24-58.
[6] Note: Respondent in the Petition for Review filed with the 1st Division of the Court is now the petitioner in the case before the Court *En Banc*.

On February 8, 2001, petitioner filed with the BIR its Annual Information Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1604-E), covering the summary of remittances of expanded withholding tax payments. The document summarized the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E) filed by petitioner for the year 2000. The existence of this document as well as the monthly withholding tax returns was admitted.

On December 15, 2004, respondent issued a Preliminary Assessment Notice (PAN) and a Final Assessment Notice (FAN) on January 24, 2005.

Sometime in October 2007, petitioner availed of the tax amnesty which excludes the deficiency withholding taxes subject of the instant case.

On May 24, 2010, respondent issued the subject Final Decision on Disputed Assessment (FDDA) covering deficiency expanded withholding tax in the aggregate amount of P1,756,292.07, inclusive of interest and penalties, for taxable year 2000. The FDDA was received by petitioner on June 18, 2010.

On July 19, 2010, petitioner filed the instant Petition for Review.

In her Answer filed on August 20, 2010, respondent prays to dismiss the Petition for Review moored on the following Special and Affirmative Defenses:

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Thereafter, the parties filed their Joint Stipulation of Facts and Issues dated October 15, 2010 which the Court approved on October 28, 2010.

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Petitioner filed its Formal Offer of Evidence dated November 20, 2010, which the Court resolved on February 16, 2011.

On March 4, 2011, petitioner filed a Motion for Judgment on the Pleadings which the Court denied for lack of merit through its Resolution promulgated on May 13, 2011. xxx

After several postponements, the last of which was with warning, respondent filed a Manifestation on August 17, 2011, to say that she would no longer present any evidence for her defense since the issues raised in the case 'involved questions of law' and for this reason she asked for 'thirty (30) days from September 1, 2011 or until October 1, 2011, within which to submit her memorandum.' The Court noted the Manifestation in its Resolution of August 22, 2011.

On October 3, 2011, or after the lapse of the period granted to file memorandum, respondent filed a Manifestation adopting her Answer as her Memorandum. On the other hand, petitioner failed to file any hence, the case was submitted for decision on October 10, 2011."

On September 25, 2012, the First Division of the Court promulgated a Decision, wherein the dispositive portion states:

"**WHEREFORE,** the Petition for Review dated July 18, 2010, filed by petitioner La Flor Dela Isabela, Inc., is hereby **GRANTED.** Accordingly, the assessment for deficiency expanded withholding tax in the aggregate amount of P1,756,292.07, covering taxable year 2000, is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED."

Not satisfied with how the First Division of the Court disposed of the case, CIR filed a Motion for Reconsideration (Re: Decision Promulgated 25 September 2012),[7] which was denied through a Resolution promulgated on March 22, 2013.[8]

[7] *Records*, CTA Case No. 8132, pp. 215-233.
[8] *Id.*, pp. 244-249.

Due to the denial, CIR filed the Petition for Review on March 16, 2013.

On June 17, 2013, the Court *En Banc* ordered La Flor to file a Comment. La Flor failed to comply with the Court *En Banc*'s order.[9] Thus, on September 17, 2013, the Court issued a Resolution giving due course to the "Petition for Review," and ordered the parties to file their respective Memoranda within fifteen (15) days.[10]

On October 17, 2013, CIR filed a Manifestation stating that she is adopting the arguments raised in the Petition for Review as her Memorandum,[11] while La Flor failed to file its Memorandum.

On January 15, 2014, the Court promulgated a Resolution submitting the case for decision.[12]

Hence, this Decision.

The Issues

Based on the Petition for Review[13] filed by petitioner on May 16, 2013, the following are the issues to be resolved in the present case:

1. Whether or not the Preliminary Assessment Notice ("PAN") and Final Assessment Notice ("FAN") are deemed received by respondent;

2. Whether or not the waiver was valid and binding, thus extending the period to assess; and,

3. Whether or not waivers are necessary in collecting expanded withholding taxes.

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[9] *Rollo,* CTA EB Case No. 1006, pp. 66-67.
[10] *Id.*, pp. 70-71.
[11] *Id.*, pp. 72-73.
[12] *Id.*, p. 78-79.
[13] *Id.*, pp. 6-21.

The Ruling of the Court En Banc

At the onset, the Court *En Banc* must emphasize that the Court of Tax Appeals is a court of record, as provided in Section 8 of Republic Act No. 1125.[14] In the case of *Dizon vs. Court of Appeals,*[15] the Supreme Court ruled as follows:

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo,* party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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> > 'SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.'

Well-settled is the rule that the Court shall consider evidence only those that were formally offered. Conversely, evidence not formally offered cannot be considered by the Court in deciding the case at hand.[16]

Petitioner puts forward the theory that the preliminary assessment notice and the final assessment notice are deemed received by respondent since the parties already stipulated on the issuance of the PAN and FAN. Petitioner claims that these are already judicial admissions, and that the fact that the other party joined in the Joint Stipulation of Facts and Issues ("JSFI"), is deemed to have acknowledged receipt. Petitioner also avers that since the respondent was able to answer the FAN through its protest letters,

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[14] Republic Act No. 1125, entitled "An Act Creating the Court of Tax Appeals," dated June 16, 1954.

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Section 8. *Court of record; seal; proceedings.* - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[15] G.R. No. 140944, April 30, 2008, 553 SCRA 111.

[16] Revised Rules of Court - Rule 132. Presentation of Evidence.

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Section 34. The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

respondent indirectly admits that it has received the FAN. Finally, petitioner states that respondent failed to specifically deny an actionable document, and is thus estopped from doing so.

The Court *En Banc* does not agree with petitioner.

As pointed out by the Court in Division in the Decision dated September 25, 2012, wherein it states that:

> "Based on the stipulation of the parties, the only assessment notice issued by respondent that petitioner received specifically on June 18, 2010, is the FDDA dated May 24, 2010. Obviously, the FDDA was issued beyond the three-year prescriptive period mandated under Section 203 of the NIRC, as amended.
>
> While it was stipulated that respondent issued a PAN dated December 15, 2004 as well as a FAN dated January 24, 2005, and that under Section 4, Rule 129 of the Rules of Court, these judicial admissions made by the parties during the pre-trial conference requires no proof, there is no iota of evidence to prove that these assessment notices were properly placed in a sealed envelopes addressed to petitioner, officially released from the responsible office of respondent, served personally or through registered mail and finally received by petitioner or its duly authorized representative in due course on a date certain.
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> Jurisprudence has it that if the taxpayer denies having received an assessment from respondent, as in the case at bar, it is incumbent upon the latter to prove to the satisfaction of the Court that such notice was indeed received by the taxpayer addressee.
>
> On account of petitioner's insistence that the only notice of assessment it received from respondent was the FDDA, the burden of proof is shifted to respondent to establish that petitioner indeed received the PAN and the FAN either personally or in the due course of mail. The Highest Tribunal further states, thus:

> '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 letter was indeed received by the addressee xxx'

This ruling was reiterated in the case of *Barcelon, Roxas Securities, Inc. (now Known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,* where the Supreme Court held 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.

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It is worth to note that respondent never endeavored to present evidence in support of her defense arguing that only legal issues were there for the Court to resolve. But there were factual issues which needed presentation of evidence. The allegations of respondent in her lone pleading, i.e. Answer, are not proof, they are just contentions without any probative value.

The failure of the respondent to prove receipt of the assessment by petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue assessment against petitioner for the taxable year 2000 had already prescribed."

In the Resolution dated March 22, 2013, the Court in Division tackled the stipulation in JSFI[17] dated October 26, 2010. The JSFI dated October 26, 2010 states::

> "1.6 Respondent issued a Preliminary Assessment Notice (PAN) dated 15 December 2004.
>
> 1.7 Respondent issued a Final Assessment Notice (FAN) dated 24 January 2005."

[17] *Records*, CTA Case No. 8132, pp. 101-102.

Clearly from the above quoted JSFI, La Flor did not admit to receiving the PAN or FAN. The stipulation only covers the issuance of these documents by the CIR. Thus, the Resolution dated March 22, 2013, the Court in Division correctly pointed out that:

> "Contrary to respondent's contention, a stipulation as to her issuance of the PAN dated December 15, 2004 and the FAN dated January 24, 2005, cannot by any stretch of imagination be synonymous to receipt by petitioner. Even Mr. Webster would revolt if respondent would insist that to issue is equivalent to receive for they are exactly the opposite. To issue is defined as 'to send forth, to send out, or to send out officially' or the act of issuing, sending forth while to receive is to take into possession and control, or to accept custody of. Respondent is the source of both the PAN and the FAN for delivery or service to the addressee, which in this case is the petitioner. However, no proof was presented that the latter received them. In view thereof, the only assessment issued by respondent which petitioner received was the FDDA. Even assuming for the sake of argument that the PAN and the FAN were received on the dates they were issued, on December 15, 2004 and January 24, 2005 respectively, still their issuance were beyond the 3-year prescriptive period mandated by law."[18]

With the denial by respondent of the receipt of the PAN and FAN, the burden to prove that they were sent and received is shifted to petitioner. As correctly cited by the Court in Division, the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.,) v. Commissioner of Internal Revenue*,[19] is applicable in the case at bench, to quote:

> "In its Decision, the CTA resolved the issues raised by the parties thus:
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> > Jurisprudence is replete with cases holding that if the taxpayer denies ever

[18] *Rollo*, CTA EB Case No. 1006, p. 61.
[19] G.R. No. 157064, August 7, 2006, 498 SCRA 126.

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 *(Republic vs. Court of Appeals, 149 SCRA 351).* Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:*

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xxx. 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. xxx.

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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."

The Court *En Banc* finds it proper to point out that CIR chose not to adduce any evidence, but it was given ample opportunity to do so.[20] Consequently, there was a failure to dispose of the burden of proving the receipt of the PAN and FAN.

In the case of *People of the Philippines v. Joseph Typingco ("Typingco case")*,[21] the Court *En Banc* ruled:

> "Note that in the present case, Fiesta Pack and respondent denied receipt of the PAN and the FAN issued by petitioner who claimed the contrary. **It was therefore incumbent upon the latter to prove that Fiesta Pack or respondent indeed received the assessment notices.** But as found by the Court in Division, petitioner utterly failed in this regard.
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> xxx xxx xxx
>
> With respect to the PAN, no sufficient evidence was presented, *i.e.*, the affidavit of person who caused the service by ordinary mail stating compliance with all the requirements of such service. The same is true with the FAN, which was allegedly sent by registered mail. There is no indication that petitioner was able to meet or satisfy the requirements under Section 7 of Rule 13 of the Rules of Court. Neither an affidavit nor registry return receipt was presented to prove its mailing to petitioner and receipt by the addressee. In other words, petitioner failed to establish by clear and convincing evidence that Fiesta Pack or respondent Typingco received the subject PAN and/or FAN, in accordance with the law and the rules and regulations on the matter.
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[20] *Records*, CTA Case No. 8132, pp. 158-160.
[21] CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.

In this regard, the Court in Division made the following observation to which the Court *En Banc* agrees, thus:

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'**It is a general rule that when service of notice is an issue, 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**. x x x

Jurisprudence likewise dictates that 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.' Also, it is a rule that 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.

Again, **the prosecution failed to demonstrate that the registry receipt had been actually served upon the accused or upon his duly authorized agent**. The bare testimony of Teresita Maglunog, the BIR document locator and the registry receipt are utterly insufficient to prove that the assessment notices and demand letters were received by the accused. **Such failure of the prosecution is a fatal blow to its case.**'" (*Emphasis supplied.*)

The CIR did not present any document to support the fact that La Flor or its duly authorized agent legitimately received either the

PAN or the FAN. For failing to prove with certainty that either the PAN and/or FAN were received by La Flor, the Court *En Banc* must deny the Petition for Review filed by CIR.

Instructive is the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[22] wherein the Supreme Court extensively discussed the consequences of not complying with the notice requirements as stated in Section 228 of the 1997 NIRC, as follows:

> "This now leads to the question: Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
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> The answer to these questions require an examination of Section 228 of the Tax Code which reads:
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>> '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 preassessment notice shall not be required in the following cases:
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>> 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.** x x x' (*Emphasis supplied*).
>
> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which

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[22] G.R. No. 185371, December 8, 2010

the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.

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From the provision quoted above, **it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**

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It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said –

> 'Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** x x x" (*Emphasis supplied*).

As petitioner failed to prove the receipt of the PAN by respondent, as far as the Court *En Banc* is concerned, and based on the records at hand, there is no PAN that was received by La Flor, effectively denying the latter of its right to due process.

Again in the *Typingco case*,[23] the Court finds the following instructive:

> "[S]uffice it to say that **there can be no final, executory and demandable assessment where there is no showing that the subject PAN and the FAN were properly and duly served upon the taxpayer concerned.**
>
> As earlier discussed, petitioner was not able to prove that the PAN and the FAN were sent and actually received by Fiesta Pack and/or respondent Typingco. Thus, respondent is correct in arguing that the assessments issued by the BIR cannot be considered as final, executory and demandable.

[23] *Supra*, note 21.

In *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*, the Supreme Court emphasized that although there is no specific requirement that the taxpayer should receive the notice within the prescriptive period, **due process requires at the very least that such notice actually be received. If it appears that the person liable for the payment did not receive the assessment, the assessment could not become final and executory.** To quote:

> 'Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer actually receive said notice within the five-year period. **It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party.**
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> xxx xxx xxx
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> In *Republic v. De le Rama*, we clarified that, when an estate is under administration, notice must be sent to the administrator of the estate, since it is the said administrator, as representative of the estate, who has the legal obligation to pay and discharge all debts of the estate and to perform all orders of the court. In that case, legal notice of the assessment was sent to two heirs, neither one of whom had any authority to represent the estate. We said:
>
>> **The notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect.** In the case of *Bautista and Corrales Tan v. Collector of Internal Revenue* . . . this Court had occasion to state that 'the assessment is deemed made when

> the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment.' **It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory**. x x x" (*Emphasis supplied.*)

As such, we affirm the Court in Division's ruling cancelling and setting aside the subject assessment for deficiency expanded withholding taxes for the taxable year 2000. Accordingly, it is unnecessary to delve into the other issues raised in the present Petition for Review.

The Court *En Banc* finds no reasonable justification to disturb the findings and conclusion in the Assailed Decision dated September 25, 2012 and the Assailed Resolution dated March 22, 2013.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated September 25, 2012 and the Assailed Resolution dated March 22, 2013 are hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

LA FLOR DELA ISABELA, INC.,
Respondent.

CTA EB NO. 1006
(CTA Case No. 8132)

Present:

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

Promulgated:
NOV 19 2014
4:20 p.m.

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CONCURRING OPINION

I concur in the denial of the present Petition for Review. With utmost respect, I am, however, of the opinion that the discussion of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, regarding the consequence of petitioner's failure to formally offer evidence that will prove that respondent received the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) is academic as there is nothing on the records of the case that confirms such fact of receipt by respondent. To be sure, while certain signatures appear on the face of the PAN and FAN which seem to indicate receipt of the same, the identity of the signatories and their authority to receive the PAN and FAN were not established during trial.

Accordingly, I CONCUR in the RESULT and VOTE to DENY the Petition for Review filed by the Commissioner of Internal Revenue.

ROMAN G. DEL ROSARIO
Presiding Justice