REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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THE MERRY COOKS, INC.,
Petitioner,

C.T.A. CASE NO. 7154

- versus -

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 19 2007 ; 1:35 pm

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DECISION

BAUTISTA, J.:

Before us is a Petition for Review wherein The Merry Cooks, Inc. is seeking for the cancellation of its deficiency income tax, value-added tax, expanded withholding tax and documentary stamp tax assessments amounting to P3,011,397.10, inclusive of penalties, issued against it for the year ending December 31, 1999.

The facts, as culled from the records, are as follows:

The Merry Cooks, Inc. (Petitioner) is a corporation duly organized and existing under Philippine laws with principal office presently located at 2533 Madre Perla Street, San Andres Bukid, Manila.

Commissioner of Internal Revenue (Respondent) is the officer duly authorized to perform his duties including, *inter alia*, the power to decide disputed assessments or other charges, penalties imposed in relation thereto, pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended. Its principal office is located at the 5th Floor of the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 21, 2000, respondent, through its Revenue District Office (RDO) No. 41 – Mandaluyong City, served upon petitioner a Letter of Authority (LOA 2000 00000223) dated September 6, 2000 which authorized Revenue Officer Cynthia Pangilinan to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 1999 to December 31, 1999.[1] At the time of service thereof, petitioner's principal office was located at its old address, 48 Lions Road, Barangka Ilaya, Mandaluyong City.

On August 7, 2001, petitioner filed an Application for Registration Information Update (BIR Form No. 1905) with respondent for the transfer of its registered address from Mandaluyong City to 2533 Madre Perla Street, San Andres Bukid,

[1] Exhibit "A"

Manila which is under the jurisdiction of RDO No. 34.[2] Petitioner's transfer was approved by respondent, through his Revenue District Officer, in a Memorandum dated August 28, 2001.[3]

On September 9, 2002, petitioner executed a "Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code" extending respondent's period to assess until June 30, 2003.[4]

On June 16, 2003, respondent, through its RDO No. 41 – Mandaluyong City, issued and allegedly sent formal assessment notices for deficiency income tax, value-added tax, expanded withholding tax and documentary stamp tax liabilities to petitioner's old address at Mandaluyong City.[5] Petitioner purportedly did not receive these Formal Assessment Notices (FAN).

On May 14, 2004, Ma. Giannina V. Suarez (Managing Partner of petitioner) received a letter captioned "First Notice" dated April 20, 2004 from respondent advising her to settle the alleged deficiency tax assessments for the year ended December 31, 1999 within ten (10) days from receipt thereof.[6]

Treating the "First Notice" as the Formal Assessment Notice, Ms. Suarez, through her counsel, filed on May 28, 2004 a protest letter for her and petitioner's behalf refuting the veracity of the alleged deficiency tax assessments.[7] For respondent's failure to act upon the protest within one hundred eighty (180) days

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[2] Exhibit "C"
[3] Exhibit "D"
[4] BIR Records, page 107
[5] Exhibits "F", "G", "H", "I"
[6] Exhibit "E", No. 7 of Petition for Review
[7] Exhibit "J"

from the lapse of the sixty (60)-day period for the submission of all relevant supporting documents, petitioner filed the instant Petition for Review with this Court on February 22, 2005.

Respondent filed his Answer alleging the following Special and Affirmative Defenses:

> "4. All presumptions are in favor of the correctness of the Assessment;
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> 5. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment;
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> 6. The Petitioner's Annual Income Tax Return for 1999 used Lion's Road, Barangka Ilaya, Mandaluyong City as its business address;
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> 7. The Petitioner failed to show proof that it has already secured a Certificate of Registration with the Revenue District Office No. 34, the Revenue District having jurisdiction on the new address of the Petitioner;
>
> 8. The running of the prescriptive period was tolled by reason of the change of address of the Petitioner."

After trial, the case was submitted for decision without any Memorandum filed by petitioner.

The issues, jointly stipulated by the parties, submitted for this Court's resolution are the following:

> "1. Whether or not the formal assessment notices for the deficiency income tax, value-added tax, expanded withholding tax and

documentary stamp tax assessments issued to Petitioner for the year ended December 31, 1999 were issued beyond the three (3) years reglementary period under Section 203 of the National Internal Revenue Code;

2. Whether or not the aforesaid formal assessment notices issued to Petitioner were sent by Respondent to the former's old address at Lion's Road, Barangka Ilaya, Mandaluyong City after its change of address has been manifested to and approved by the Revenue District Office No. 41 – Mandaluyong City of the Bureau of Internal Revenue;

3. Whether or not the assessment has become final on the ground that the Petitioner failed to submit all documents in support of its protest; and

4. Whether or not Petitioner has validly notified the Respondent of its change of address."

The Court reckons to resolve first the issue of whether or not the formal assessment notices were issued beyond the three (3)-year reglementary period inasmuch as it will determine the necessity of proceeding with the other issues.

The period to assess is provided under Section 203 of the National Internal Revenue Code (NIRC) which states:

> "**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

For its income, value-added, expanded withholding, and documentary stamp taxes, petitioner filed its corresponding returns thereon on April 17, 2000; January 24, 2000; January 25, 2000; and April 20, 1998, respectively. Counting the three (3) year period from these dates, respondent had until April 16, 2003; January 24, 2003[8]; January 24, 2003; and April 19, 2001. By virtue of the "Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code" executed by petitioner, however, respondent's right to assess had been extended until June 30, 2003. Thus, respondent allegedly issued Formal Assessment Notices for deficiency income, value-added, expanded withholding, and documentary stamp taxes on June 16, 2003.[9]

Petitioner, however, denied having received the said FANs. In such situation, respondent has the burden of proving that he sent or mailed them. The case of ***Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue***[10] decided by the Supreme Court is in point:

> "[W]hen 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[11], 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

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[8] Since the last day for filing the VAT return for the 4th quarter of 1999 is January 25, 2000 under Section 114 (A) of the NIRC, the three (3) year period to assess is computed from that date.
[9] Exhibits "F-1", "G-1", "H-1", & "I-1"
[10] G.R. No. 157064, August 7, 2006, citing Protector's Services, Inc. vs. Court of Appeals (386 Phil. 611)
[11] Section 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;

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."

In the case at bar, respondent failed to present an iota of evidence that it had sent or mailed the formal assessment notices to petitioner, whether in its old or new address. Neither did the BIR Records contain any evidence to that effect. Independent evidence, such as registry receipts of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained. Yet respondent failed to present such evidence. Absent any evidence of sending or mailing, We are left with no other choice but to rule that respondent did not send or mail the Formal Assessment Notices.

As explained by the High Tribunal in the same case of ***Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue***[12], citing ***Collector of Internal Revenue vs. Bautista***[13]:

> "[A]n assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent."

Applying all the foregoing to the instant case, respondent's right to assess had already prescribed for his failure to send or mail the formal assessment notices to the petitioner within the period provided under Section 203. The same is likewise

[12] G.R. No. 157064, August 7, 2006, citing Protector's Services, Inc. vs. Court of Appeals (386 Phil. 611)
[13] 105 Phil. 1326, 1327 (1959)

true notwithstanding the "Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code" which extended respondent's period to assess until June 30, 2003 because until that date, respondent failed to prove that he sent or mailed the Formal Assessment Notices to petitioner.

Now that the issue of prescription has been resolved in the affirmative, the Court no longer finds the reason to discuss the remaining issues for the same has become moot.

IN VIEW OF THE FOREGOING, the instant Petition is hereby **GRANTED.** Accordingly, the assessment for deficiency income tax, value-added tax, expanded withholding tax and documentary stamp tax in the total amount of P3,011,397.10, inclusive of penalties, issued against petitioner for the year ending December 31, 1999, is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division