REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

KITA CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6605

Members:

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

Promulgated:

AUG 0 9 2007, 10:05AM

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DECISION

CASANOVA, *J.*:

This is an appeal praying for the cancellation of respondent's deficiency income tax assessment against petitioner for taxable year 1998 in the amount of P13,629,012.94, inclusive of penalties and interest.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with business address at Building No. 7171, corner El and Elmore Streets, Clark Special Economic Zone, Angeles City, Pampanga. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with authority to carry out the functions, duties and responsibilities of said Office, including, *inter alia*, the power to decide disputed assessments, cancel, and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) and other tax laws, rules and regulations.[1]

Petitioner is registered with the Clark Development Corporation (CDC) under the Bases Conversion and Development Act of 1992 (Section 15 of Republic Act No. 7227, Section 5, of Executive Order No. 80 and Proclamation No. 163), as a Clark Special Economic Zone (CSEZ) enterprise primarily engaged in the business of manufacturing consumer electronic products. As a registered CSEZ enterprise, petitioner is entitled to tax and duty free importation of raw materials, equipment, household and personal items, and is exempted from national and local taxes. However, petitioner is liable to pay a final tax of 5% based on gross revenues less allowable deductions as defined under the Act.[2]

On April 15, 1999, petitioner filed its 1998 income tax return with METROBANK, Angeles Branch, a duly authorized agent bank of the Bureau of Internal Revenue (BIR) and paid 5% final income tax of P6,714,943.00 on taxable income of P134,298,865.00.[3]

On October 22, 1999, Letter of Authority No. 46518 was issued by the Regional Director of Revenue Region No. 4, San Fernando, Pampanga, authorizing the examination of the books of accounts and other accounting records of petitioner relative to its internal revenue taxes for taxable year 1998.[4]

On November 6, 2001, petitioner received a letter from Mr. Liberato L. Navarro, Revenue District Officer of Revenue District Office (RDO) No. 21, San Fernando, Pampanga, informing petitioner that a report of investigation on its 1998 internal revenue tax liabilities has been submitted finding it liable for deficiency income and expanded withholding taxes in the respective amounts of P13,686,100.00 and P516,917.67.[5]

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[1] Pars. 1 & 2, Joint Stipulation of Facts, Rollo, pp. 74-77, duly approved by this Court in a Resolution dated July 23, 2003, Rollo, p. 79.
[2] Item No. 9, Notes to petitioner's Financial Statements for the years 1998 & 1997, Exhibit D-16
[3] Exhibits D and D-1, Rollo, pp. 96-97.
[4] Exhibit 1, page 168, BIR Records
[5] Pages 224 & 225, BIR Records

On April 30, 2002, petitioner received a Preliminary Collection Letter from the respondent's Bureau of Internal Revenue, alleging that for the taxable year ended December 31, 1998, petitioner has outstanding income tax liability, inclusive of increments, in the amount of P13,629,012.94[6] per Assessment/Demand No. 021-98-41B-000675 issued on February 6, 2002.[7] However, petitioner denies receiving the Assessment Notice/Formal Letter of Demand referred to in the Preliminary Collection Letter.

Based on respondent's Formal Letter of Demand,[8] the alleged deficiency income tax liability of the petitioner for taxable year 1998 arose from the adjustment of petitioner's taxable gross income due to the disallowance of certain expenses and the alleged under-declaration of petitioner's other income, computed as follows:

Gross Sales					P3,501,586,934.89
Less:	Sals Returns and Allowances				24,238,737.17
Net Sales					P3,477,348,197.72
Less:	Cost of Sales				
	Aiwa (Export)			P2,781,564,894.73	
	Ascop (Local)			556,229,682.96	
	Total			P3,337,794,577.69	
	Less:	Unallowable Cost And deduction under RR 1-95			
			Indirect Labor	P 53,074,747.71	
			Communication Exp.	4,417,803.55	
			Representation	3,960,372.26	
			Security Services	2,078,970.35	
			Insurance Exp.	5,031,959.08	
			Janitorial Exp	1,419,683.96	
			Stationary & Office Supplies	1,169,295.00	
			Training & Dev.	390,472.17	
			Processing fee	316,830.00	
			Legal & Prof fee	70,000.00	
			Depr-Exp-Comm Exp	213,771.30	
			Maxicare Prem. Exp.	295,393.09	
			Repair & Maintenance	861,577.64	
			Med., Dental & Hosp.	13,220.28	
			Fuel & Transportation	248,230.31	
			Miscellaneous Expense	592,507.24	
			Total	P 74,154,833.94	3,263,639,743.75

[6] Par. 3, Joint Stipulation of Facts
[7] Exhibit A, Rollo, p. 90.
[8] Exhibit 15; pages 242-243, BIR Records

Gross Income per investigation			P 213,708,453.97
Add:	Other Income (Net)		
	Interest & Miscellaneous Income		
	Per records	P 105,833,121.47	
	Less: Non-taxable income/		
	Income subjected to Final tax	6,829,431.00	99,003,690.47
Taxable Income per investigation			P 312,712,144.44
Tax Due thereon			P 15,635,607.22
Less:	Tax paid per return		6,714,943.00
Deficiency Income Tax			P 8,920,664.22
Add:	Interest 52.50%		4,683,348.72
	Compromise penalty		25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE			**P 13,629,012.94**

On May 15, 2002, petitioner received from respondent a Final Notice Before Seizure dated May 14, 2002, reiterating the demand for the payment of the alleged 1998 deficiency income tax liability of P13,629,012.94.[9]

On May 29, 2002, petitioner, through the Tax Division of Sycip Gorres Velayo & Co., filed an administrative protest against the subject deficiency income tax assessment with the BIR's Revenue Region No. 4, San Fernando, Pampanga.[10]

Due to the respondent's inaction on its protest, petitioner elevated its case before this Court on February 21, 2003.

Respondent, in his Answer filed on April 2, 2003, raised the following Affirmative and Special Defenses:

10.) The Assessment Notice issued on February 6, 2002 has become final, executory and demandable for the same was not protested within the 30-day period from receipt thereof in the regular course of the mail (Section 228, Tax Code);

11.) The assessment is based on the disallowance of certain expenses pursuant to Revenue Regulations No. 1-95 and the non-declaration of other income;

12.) The assessment was issued in accordance with law and regulations; and

13.) All presumptions are in favor of the correctness of tax assessments.

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[9] Page 247, BIR Records
[10] Exhibit C, Rollo, pp. 92-95

The parties presented the following issues for this Court's resolution[11]:

1. Whether or not petitioner, through its skeletal personnel assigned at its office at Bldg. 7171, corner El and Elmor Streets, Clark Special Economic Zone, Angeles City, Pampanga, received the Formal Assessment Notice No. 021-98-41-13-000675 dated February 6, 2002 of respondent's Bureau of Internal Revenue;

2. Whether or not the petitioner made the necessary adjustments of those non-allowable deductions in its Annual Income Tax Return for the year ended December 31, 1998;

3. Whether or not the petitioner declared all of its income for the year 1998 and accordingly adjusted the same by the income items, which have already been subjected to final tax in the computation of its taxable income;

4. Whether or not the assessment has prescribed;

5. Whether or not the Assessment Notice No. 021-98-41B-000675 issued on February 6, 2002 has become final, executory and demandable for the same was not protested within the thirty (30) day period to protest the same;

6. Whether or not petitioner received the subject Assessment Notice in the ordinary course of mail;

7. Whether or not the disallowance of certain expenses pursuant to Revenue Regulation No. 1-95 was proper.

The first and sixth issues shall be discussed jointly as they both relate to the resolution of whether or not petitioner, through its skeletal personnel assigned at its office at Bldg. 7171, corner El and Elmor Streets, Clark Special Economic Zone, Angeles City, Pampanga, received in the ordinary course of mail, the Formal Assessment Notice No. 021-98-41-B-000675 dated February 6, 2002 of respondent's Bureau of Internal Revenue.

Respondent claims that the Preliminary Assessment Notice and the Final Assessment Notice/Formal Letter of Demand, which were sent to petitioner by mail on January 24, 2002 and March 13, 2002, respectively, at the address stated in its 1998 income tax return, were presumed received by petitioner in the regular course of mail in accordance with Section 3(v) Rule 131 of the Revised Rules of Court and the Supreme Court's ruling in the cases of ***NAVA vs. CIR, G.R. No. L-19470, January 30, 1965*** **and** ***Sebastian vs. Workmen's***

[11] Joint Stipulation of Facts and Issues

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Compensation Commission G.R., No.-L-42587, February 28, 1978. To support his stance, respondent presented Certified Machine Copies of the Transmittal Reports dated January 24, 2002 and March 13, 2002[12] and testimony of Mr. Noel S. Musngi, Computer Operator I, Adm. Div. Gen. Services, Rev. Region No. 4, San Fernando, Pampanga.

Petitioner, on the other hand, asserts that except for the Preliminary Collection Letter and Final Notice Before Seizure, it did not receive from the BIR a copy of the Preliminary Assessment Notice nor the Formal Letter of Demand and Formal Assessment Notice. Petitioner avers that although it has ceased its business operations in CSEZ, Pampanga, it has specifically instructed the personnel of Eight Arms Security Agency[13] assigned thereat to accept all incoming mails and correspondences for petitioner and to forward the same to its principal stockholder, Solid Group, Inc. at Solid House Building, No. 2285, Pasong Tamo Extension, Makati City. According to petitioner, had the Preliminary Assessment Notice and Formal Assessment Notice been actually mailed, the same would have reached its office in the ordinary course of mail, in the same way that the Preliminary Collection Letter and the Final Notice Before Seizure were delivered to its office. Petitioner further states that it would have immediately filed a protest to the Preliminary Assessment Notice and the Formal Letter of Demand had it in fact received the same in the mail, just like what it did when it received the Preliminary Collection Letter on April 30, 2002.

We rule in favor of petitioner.

Respondent relies on the presumption of law that "a letter duly directed and mailed was received in the regular course of the mail". [Sec. 3(v), Rule 131 of the Revised Rules of Court].

In order for the said presumption to arise, the Supreme Court in the case of ***NAVA, supra*** held that the following facts must first be established: a) that the letter was properly

[12] Exhibit 16, Rollo, pp. 160-161 and Exhibit 17, Rollo, pp. 162-165
[13] Exhibit F, Rollo, p. 121.

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addressed with postage prepaid; and b) that it was mailed. If one of the said facts fails to appear, according to the Supreme Court in the ***NAVA*** case, the presumption does not lie.

In the case at bar, respondent's evidence failed to meet the requirements for presumption to arise. There is nothing on record to show that the disputed assessment notice was in fact mailed or sent to petitioner.

Respondent presented in evidence Transmittal Reports dated January 24, 2002 and March 13, 2002 listing down several names of companies, including herein petitioner, with their corresponding addresses. Such mailing lists, though stamped as received by the San Fernando Post Office as "Registered" on the said dates, do not positively identify that the documents mailed on January 24, 2002 and March 13, 2002 were the subject Preliminary Assessment Notice and Formal Assessment Notice/Formal Letter of Demand. Neither could We accept the testimony of respondent's witness, Mr. Musngi, for, as stressed by petitioner in its Memorandum, it was merely based on assumptions, to wit:

ATTY. RAYMUNDO:

Q: And what document did you send on March 13, 2002?

MR. MUSNGI:

A: The Assessment Notices and the Formal Demand Letters.

ATTY. RAYMUNDO:

Q: But it is not reported in the transmittal report?

MR. MUSNGI:
A: Yes, Sir.

ATTY. RAYMUNDO:

Q: With respect to the Preliminary Assessment Notice, when did you send this to Kita Corporation?

xxx xxx xxx

MR. MUSNGI:

A: The Preliminary Assessment Notice was send [sic] on January 24, 2002.

ATTY. RAYMUNDO:

Q: And what is your basis for saying so?
MR. MUSNGI:

A: The list, Sir.

xxx xxx xxx

ATTY. RAYMUNDO:

Q: And how can you say that a Preliminary Assessment Notice was [sent] on January 24, 2002?

MR. MUSNGI:

A: *Naaalala ko sa operation, naunang nai-mail iyong, Preliminary Assessment Notice.*

(*pages 24-25,TSN, July 21, 2004*)

Moreover, the respondent's witness, Mr. Musngi, has testified that the BIR has no way of confirming whether the documents mailed to taxpayers were actually received by the latter:

ATTY. PASCUAL:

Q: Aside from the transmittal report, Mr. Witness, are there any evidence to prove that the notices, particularly Preliminary Assessment Notices, the formal notice and the Formal Letter of Demand was actually send to petitioner to its principal business address?

MR. MUSNGI:
A: *Wala na po, Sir.*

On cross examination, Mr. Musngi stated:

ATTY. RAYMUNDO:

Q: Do you receive a certain document from the Post Office to prove that all these documents have been received?

MR. MUSNGI:

A: *Wala, Sir, walang nagregister kung nakuha iyon.*

(*pages 21-22 & 28, TSN, July 21, 2004*)

If indeed, the Preliminary Assessment Notice and Formal Assessment Notice/Formal Letter of Demand were sent to petitioner through registered mail, respondent should have submitted the corresponding registry receipts issued by the Bureau of Posts, or registry return cards 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 a certification issued by the San Fernando Post Office. Thus, as held by the Supreme Court in the ***Nava*** case:

> While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), 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.

For petitioner's failure to sufficiently prove the fact of mailing of the disputed assessment, the presumption that petitioner received the subject assessment did not arise in favor of respondent.

Even granting for the sake of argument that the presumption did arise, the same is merely disputable and may be overcome by contrary evidence. Petitioner denied having received the subject assessment. Such denial shifted the burden of proof on respondent as ruled by the Supreme Court in the case of ***Republic of the Philippines vs. The Court of Appeals, and Nielson and Company Inc., GR No. L-38540 dated April 30, 1987***, which states:

> x x x As correctly observed by the respondent court in its appealed decision, **while the contention of the petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still, this 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 by the addressee**. Thus:
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>> Appellee contends that per Exhibit "A", the notice was released and mailed to the appellant by the BIR on August 4, 1955 under

> the signature of the Chief, Records Section, Office; that since the original thereof was not returned to the appellee, the presumption is that the appellant received the mailed notice. This is correct, but this being merely a disputable presumption, the same is 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 received by the addressee. (Emphasis supplied)

As discussed earlier, an examination of the evidence presented by respondent to determine whether he succeeded in carrying the burden of proof would yield the same conclusion, *i.e.*, that respondent's evidence were inadequate and incompetent to prove the fact of mailing and receipt by petitioner of the disputed assessment.

We proceed to the fifth issue. Respondent alleges that this Court has no jurisdiction to take cognizance of the instant petition on the ground that petitioner failed to file an administrative protest within the thirty (30) day period as provided for by law. This being so, the Formal Assessment Notice No. 021-98-41B-000675 has allegedly become final, executory and demandable.

We disagree. Section 228 of the NIRC of 1997 provides that:

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days **from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. (Emphasis supplied)

Relative thereto Section 3.1.5 of Revenue Regulations No. 12-99 states that:

> *Disputed Assessment*. – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof x x x
>
> xxx xxx xxx
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days **from date of receipt thereof**, the assessment shall become final, executory and demandable. (Emphasis supplied)

From the foregoing provisions of law and regulations, the thirty (30) day period for the filing of administrative protest is reckoned from the date of receipt of the Formal Assessment Notice. Since petitioner never received the Formal Assessment Notice/Formal Letter of Demand, the thirty (30) day period never even commenced.

Furthermore, as correctly pointed out by petitioner, the Preliminary Collection Letter[14], which petitioner received on April 30, 2002 cannot be considered a substitute for the assessment notice because it does not state the facts, the law, rules and regulations or jurisprudence on which the assessment is based. Since it merely states the amount of taxes being collected, the Preliminary Collection Letter fails to comply with the requirements of a valid assessment notice under Section 228 of the NIRC of 1997. Therefore, the 30-day period for the filing of the administrative protest cannot be reckoned from the date of receipt of the Preliminary Collection Letter.

Regarding the fourth issue of whether or not the assessment has prescribed, Section 203 of the NIRC of 1997, reads as follows:

> "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."

Based on the aforequoted provisions of Section 203, respondent had three (3) years from the actual date of or last day for the filing of the return, whichever is later, to send an assessment notice to petitioner. An 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

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[14] Exhibit A, ibid.

should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.[15]

In the present case, the pieces of evidence offered by respondent failed to prove that the subject Formal Assessment Notice No. 021-98-41B-000675 was released, mailed or sent to petitioner within the three-year period from the last day of filing of petitioner's return on April 15, 1999 or until April 15, 2002. Such evidence, therefore, are insufficient to give rise to the presumption that the assessment notice was received in the regular course of mail. Consequently, the right of the respondent to assess and collect the alleged deficiency income tax of P13,629,012.94 for taxable year 1998 is barred by prescription.

In view of the foregoing, this Court finds it unnecessary to dwell on the merits of the assessment.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's assessment against petitioner for deficiency income tax in the amount of P13,629,012.94 for taxable year 1998 is hereby **CANCELLED and WITHDRAWN** due to prescription.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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[15] BARCELON, ROXAS SECURITIES, INC. (now known as UBP Securities, Inc.) vs. COMMISSIONER OF INTERNAL REVENUE, G.R. NO. 157064, August 7, 2006

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
Chairman, First Division