Significant Court of Tax Appeals Decisions
February 2019

MR to the denial of administrative protest by the duly authorized representative of the CIR, toll the 30-day period to appeal before the CTA.

In this case, the taxpayer, upon receipt of the FDDA issued by the OIC-ACIR, denying, in part, its protest, filed its Motion for Reconsideration with the Office of the CIR. Subsequently, the same was denied, which resorted the taxpayer to file an appeal before the CTA. CIR on the other hand, questioned the jurisdiction of the Court, stating that a motion for reconsideration does not toll the 30-day period to appeal to the CTA. Hence, the appeal filed by the taxpayer was already beyond the period provided by law.

The Court ruled that a motion for reconsideration that does not toll the 30-day period to appeal refers to the motion for reconsideration of denial of the administrative protest. It does not, in any way, pertain to the denial of the administrative protest by the duly authorized representative of CIR. The 30-day mandatory period to appeal is from CIR's decision, ruling, or inaction. It is nowhere indicated that such 30-day period should be reckoned from the decision, ruling or inaction of CIR's duly authorized representative. Thus, the appeal filed by the taxpayer was made within the period prescribed by law and thus, the court has jurisdiction to entertain the present appeal. *(Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9301, January 4, 2019)*

LOA is mandatory to make an assessment valid. There is no prohibition for the issuance of subsequent LOA authorizing another set of revenue officers to continue the audit.

The taxpayer questioned the authority of the revenue officers who recommended the issuance of the tax assessments. It can be gleaned from the facts that the revenue officers who were authorized to examine the books of accounts and other accounting records of the taxpayer were different from the ones who recommended the issuance of the tax assessments against the petitioner.

The Court recognizes that there can be instances where a revenue officer, previously authorized through an LOA, may not be able to complete the examination of the concerned taxpayer, by reason of retirement, reassignment, illness, or death, of the said revenue officer. But what is not acceptable to this Court is CIR's proposition that because of such instances, there can already be an excuse not to issue an LOA. There is nothing in the law which prohibits the issuance of a subsequent LOA authorizing another revenue officer, or new set of revenue officers, to continue the examination of books of accounts and other accounting records of the concerned taxpayer. Hence, since the said revenue officers who completed the audit and who recommended the issuance of the subject tax assessments, were not authorized via an LOA, the said tax assessments are void. *(Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9301, January 4, 2019)*.

Chief of Large Taxpayers Regular Audit Division 1 (LTS-RAD 1) is not included among the officials who are authorized to issue and sign the LOA.

The taxpayer received Letter of Authority authorizing certain revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for taxable year 2009. However, it was later found that the revenue officers named under LOA were different from those who actually conducted the audit. The revenue officers who actually examined the books of the taxpayer were only vested with authority through a Memorandum of Assignment issued by an OIC-Chief of LTS-RAD 1, reassigning to them the conduct of audit. On the other hand, the same was continued by another set of revenue officers on the basis of a Memorandum of Assignment issued by the then Chief of LTS-RAD 1. Now, the taxpayer questioned the authority of the revenue officers who conducted, since the officer who issued the Memorandum of Assignment have no authority to do so.

The Court ruled that the deficiency tax assessments issued by Commissioner of Internal Revenue against the petitioner is intrinsically void and thus, shall be cancelled and set aside. The invalidity of such deficiency tax assessments springs from the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records. *(Securities Transfer Services Inc., v. Commissioner of Internal Revenue, CTA Case No. 8961, January 8, 2019).*

Note: In this case, the issue of lack of authority of the revenue officers to conduct the audit was not specifically raised as an issue. Nevertheless, the Court is not precluded from considering the same given that a void assessment bears no fruit. In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc*., the Supreme Court also emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said: Under Section 1, Rule 14 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

If the transaction is subject to a final withholding VAT, it is the purchaser/payor, in this case, the government, who shall be responsible in remitting the final VAT due, not the seller. Also, the CIR cannot include a new assessment in the FDDA that is not included in the FAN.

Petitioner claims that the imposition of deficiency interest and compromise penalty is void for lack of legal basis. Petitioner argues that it is indisputable that it is not liable for the 12°/o VAT because the DOTr, the sole purchaser of petitioner's services, is a government agency. As such, the DOTr is required by law to deduct and withhold a 5% final withholding VAT on all its purchases of goods and services. Petitioner posits that the DOTr is the statutory withholding agent of its income payments to its supplier of goods and services. As such, it is responsible for filing the VAT returns and remittance of withholding taxes to the BIR.

The Court ruled that according to Section 114(C) of the NIRC of 1997 and Section 4.114-2 of RR No. 16-2005 the Government, the DOTr in this case, shall deduct and withhold a final VAT due at the rate of 5% on gross payment on purchases of goods and services which are subject to VAT imposed in Sections 106 and 108 of the NIRC of 1997. This makes the DOTr liable for the tax it is duty bound to withhold. Accordingly, petitioner cannot be faulted for the lapses of the DOTr in remitting on time the VAT it withheld from petitioner. Thus, the deficiency VAT assessment pertaining to the increments due to late payment of the 5% withholding VAT is void and shall be cancelled.

Good also to note that, the FDDA of the CIR or his duly authorized representative shall only delve on the disputed items in the FLD/FAN. CIR is precluded from incorporating a new assessment in the FDDA which was not part of the disputed items in the protest letter of the taxpayer, nor in the FLD/FAN. To allow CIR to incorporate new assessments in the FDDA would deprive the taxpayer of its right to due process. *(Metro Rail Transit Corporation v. Commissioner of Internal; Revenue, CTA Case No. 9016, January 8, 2019).*

Note: Also, discussed in this case is who shall be the one responsible for payment of its deficiency taxes, interest and penalties assessed with respect to its corporate income taxes on the profit arising from its rail operations when there is an existing Built-Lease-Transfer (BLT) Agreement. The Court stressed, that Income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income. Income tax should be borne by the taxpayer alone as it constitutes payment made in exchange for benefits received by the taxpayer from the State. Thus, the payment of income tax remains the liability of petitioner which earned its profits arising from its rail operations.

Due process requirement under Section 228 of the Tax Code does not apply to payment made in relation to imposition of penalties.

CIR issued BIR Form No. 0605, stating that the taxpayer is liable for the following alleged violations: (1) no books; (2) no official receipts; (3) no backend report; and (4) unaccounted POS. The taxpayer paid the alleged penalties. Thereafter, petitioner filed with the BIR a letter request for refund of the amount paid as penalties. It also filed a similar application for refund or tax credit with BIR Revenue Region on the same date. Furthermore, the taxpayer invokes deprivation of due process to invalidate the collection of the amount paid since it was not allegedly sufficiently informed in writing of the basis of the penalties imposed against it pursuant to Section 228 of the NIRC.

The Court ruled that the payment made in this case was not for internal revenue taxes but for the imposition of penalties, the latter not being the result of the usual audit and examination of the taxpayer's books and financial record for determination of internal revenue taxes due, hence, Section 228 of the Tax Code does not apply. Thus, due process through the issuance of a formal assessment notice informing the taxpayer of the law and the facts upon which the assessment is based, as provided under Section 228 of the NIRC, as amended, applies only when internal revenue taxes are the ones being collected, to wit, income tax, VAT, estate tax, excise tax, donor's tax, documentary stamp tax, capital gains tax, and other percentage taxes. In other words, if what is being collected is not in the enumeration, then such is not an internal revenue tax, which requires strict compliance with the due process requirement of issuance of formal assessment notices. *(Wholesome Foods Inc., v. Commissioner of Internal Revenue, CTA Case No. 9362, January 4, 2019).*

Issuance of tax deficiency assessment is not necessary before a criminal prosecution for tax evasion will prosper.

Accused Spouses are charged for violations of Sections 254 and 255 of the NIRC, as amended, for failure to supply correct and accurate information in their joint Income Tax Return (ITR) for taxable year 2001 and for failure to report in their income tax returns for taxable years 2002, 2003, and 2004, other income for those respective taxable years.

The Court acquitted the accused spouses for finding reasonable doubt based on the evidence presented. However, the court ruled that the taxpayer's obligation to pay tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

The government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper. *(People v. Jacinto C. Ligot and Erlinda Y. Ligot , CTA Crim. Case Nos. 0-241, 0-242, 0-243, and 0-244, January 8, 2019).*

Note: In the Lim Gaw case, the Supreme Court clarified that while the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. It is to prevent the assessment from becoming final, executory and demandable, that Section 9 of R.A. No. 9282 gives the taxpayer the remedy of filing a case with the CTA, a Petition for Review, within 30 days from receipt of the decision or the inaction of the respondent. However, the records of this case do not show that the FAN /FLD was even protested by the accused Spouses Ligot despite actual knowledge thereof. If that is the case, then as regards the civil liability of the accused Spouses Ligot, the FAN /FLD would have been rendered final and executory.

Certificate of Creditable Tax Withheld at Source constitutes sufficient evidence of the existence and validity of the income recipient's CWT.

The CTA ruled that the Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. The Court stressed that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR. *(Commisioner of Internal Revenue v. Sonoma Services Inc., CTA EB NO. 1691, January 14, 2019)*

Certificate of Authentication issued by the Philippine Consul in the USA is sufficient proof that the investment income derived from the country is tax exempt.

Taxpayer in this case is engaged in the business of making investments in the private sector banks, it is owned and controlled by financing institutions that are in turn owned, controlled, or enjoying refinancing from foreign governments or international or regional financial institutions established by foreign governments. Taxpayer requested for the refund of erroneously withheld Stock Transaction Tax (STT) on the ground that it is exempt from said tax. CIR alleged to the contrary claiming that taxpayer failed to prove the tax exemption.

The Court held that the Certificate of Authentication issued by the Philippine Consul in the USA is sufficient evidence and petitioner was able to prove that the subject income falls within Section 32(B)(7)(a) of the NIRC of 1997, hence not a subject of STT. Such being the case, the income derived by petitioner from the sale is exempt from income tax and consequently, STT. (*IFC Capitalization (Equity) Fund, LP v. Commissioner of Internal Revenue, CTA No. 9148, January 17, 2010)*

Note*:* Section 32(B)(7)(a) of the NIRC of 1997 refers to Income derived by Foreign Government as an item of Exclusion from Gross Income

Failure of the BIR to respect the taxpayers right to file a Reply within 15 days from receipt of the PAN is a denial of the taxpayer's right to due process.

Petitioner maintains that the Final Assessment Notice issued against petitioner for alleged deficiency income tax is void. Under the law, petitioner had fifteen (15) days from the receipt of the PAN, within which to file its protest thereto. However, respondent issued the FAN, merely two days after the PAN was issued, before the period for filing the protest has lapsed. By prematurely issuing the FAN without awaiting the lapse of fifteen (15) days from the date of the receipt of the PAN by petitioner, respondent acted with grave abuse of discretion by clearly violating petitioner's right to due process, thereby rendering the FAN void.

The Court ruled that the failure of the BIR Commissioner to strictly comply with the requirements laid down by Section 228 of the NIRC of 1997 and its implementing law Section 3.1.2 of RR No. 12-99 is a denial of a taxpayer's right to due process. Correspondingly, the subject FAN and the FLO are void and a void assessment bears no valid fruit. *(Highland Gaming Corporation v. Commissioner of Internal Revenue, CTA No. 8730, January 17, 2019)*

The imposition of surcharge and delinquency interest is mandatory.

Petitioner filed its Protest on the FLD/FAN and contested the imposition of surcharge and the delinquency interest.

The CTA ruled that the imposition of surcharge is mandatory, the intention being to discourage delay in the payment of taxes due to the State. The imposition of delinquency interest is also legally sound. The Tax Code mandates the imposition of such interest in the event that the taxpayer is held liable for deficiency taxes. These charges incident to delinquency are compensatory in nature and are imposed for the taxpayer's use of the funds at the time when the State should have control of said funds. Collecting such charges is mandatory. *(Hotel Specialist (Tagaytay) v. Commissioner of Internal Revenue, CTA No. 9349, January 18, 2019)*

There is no valid service of FAN if the mail matter is improperly addressed. It is a requirement of due process that the taxpayer must actually receive the assessment.

Respondent issued a Warrant of Distraint and/ or Levy against petitioner's properties and a Warrant of Garnishment to collect petitioner's alleged delinquent tax liabilities despite the lack of valid FAN. BIR claimed that it mailed a copy of its FAN to the old office address of the petitioner.

The Court held that there was no valid service of the FAN to petitioner since the respondent failed to prove that the said transmittal letter was properly addressed to petitioner. The BIR already knew that petitioner moved to a new address and yet they chose to mail the FAN to the old address. It is a requirement of due process that the taxpayer must actually receive the assessment. Hence, respondent violated petitioner's right to due process because no valid notice of assessment was sent to petitioner and the same was not actually received by the taxpayer. *(Unisphere International, Inc. v. Commissioner of Internal Revenue, CTA No. 8782, January 21, 2019)*

An assessment merely based on "BIR data", without the breakdown of the alleged amount payable and its computation is void for lack of legal and factual basis.

ANAPI filed a letter of protest assailing the assessment notice and letter of demand on the ground that the assessment lacks legal and factual basis due to respondent's failure to provide a breakdown of the amount payable and its computation.

The Court ruled that the assessments should be cancelled for lack of legal and factual basis. The assessments against ANAPI is bereft of factual basis because it was merely based on "BIR data" but BIR did not attach nor show the breakdown of the alleged amount payable and how it computed this total amount. Absent sufficient evidence to support the assessment, the presumption of correctness no longer applies, making the assessment arbitrary and capricious. Thus, the assessments have no factual basis nor sufficient supporting evidence, and must therefore be cancelled. *(Anapi Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA No. 9399, January 21, 2019)*

An Assessment based on unverified and unconfirmed third-party information is void for lack of factual basis.

Taxpayer filed its Protest questioning the validity of the assessment. The said assessment was based on third-party information which the BIR allegedly failed to verify and confirm. Hence, respondent merely presumed the discrepancy as unaccounted income giving rise to alleged taxable income subject to income tax and VAT.

The Court ruled that the third-party information was not verified with externally sourced data to check its correctness. Without the confirmation from third parties, the finding casts doubts as to the reliability and correctness of the assessment on the alleged unaccounted income. Assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from respondent's own database. *(Ayala Property*

Management Corporation v. Commissioner of Internal Revenue, CTA No. 9298, January 21, 2019)

Note: Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the system.

The reckoning date of the 120-day period should be counted from the submission of the first transmittal and not the submission date of its last transmittal to the BIR.

Petitioner filed a claim for refund with the respondent. On June 29, 2011, respondent requested for the presentation and submission of the documents supporting its claim for refund. On July 5, 2011, petitioner submitted the documents and subsequently submitted additional proof supporting its claim in later dates. It submitted its last transmittal on April 29, 2014.

The issue here is whether the judicial claim for refund was timely filed and what is the reckoning date for the running of the 120-day period. Petitioner insists that the 120-day period did not start on July 5, 2011 for there were additional documents submitted on various succeeding dates in compliance to the BIR's continued requests. Hence, the reckoning date of the 120-day period should be counted from April 29, 2014 when it submitted its last transmittal to the BIR.

The Court ruled that the 120-day period shall be reckoned from July 05, 2011, when Petitioner submitted additional documents in response to Respondent's request dated June 29, 2011. Hence, the Petition for Review filed on September 25, 2014 is beyond the prescribed period and the Court did not acquire jurisdiction over the case. (*Zuellig Pharma Asia Pacific LTD. PHILS. ROHQ v. Commissioner of Internal Revenue, CTA EB No.1656 (CTA No. 8899), January 21, 2019)*

Note: This claim is for the taxable year 2010. Under the amendment introduced by TRAIN Law, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipt or invoices and other documents in support of the application filed. Under RMC 17-2018, the 90-day period shall start from the actual date of filing of the application with complete documents duly received by the processing office. Any revenue officer or official who fails to act on the application within the 90-day period shall be punishable under Section 269 of the Tax Code, as amended.

A holding company is neither "financial intermediary" nor it belongs to the category of "bank and other financial institutions”. Hence, it is not liable for Local Business Tax.

Taxpayer is the registered owner of preferred shares of stock in San Miguel Corporation (SMC) that were deposited in a trust account that earned interest from money market placements. City of Davao collected from taxpayer local business taxes on the dividends arising from its SMC preferred shares and interests on money market placements received by petitioner alleging substantial similarity between the definition of a financial intermediary and petitioner's primary purpose of business leading to a conclusion that petitioner is a financial intermediary. Taxpayer then filed an administrative claim for refund or credit of erroneously and illegally collected local business taxes.

The Court En Banc ruled that holding companies are neither "financial intermediary" nor does it belong to the category as "bank and other financial institutions". A holding company is not included by the Local Government Code, specifically Section 131(e) in the definition of banks and other financial institutions. Thus, it is not liable for the payment of local business tax. (*City of Davao and Bella Linda N. Tanjili in her official capacity as the City Treasurer of Davao City v. ASC Investors, Inc, CTA EB No.1749 (CTA No. 157), January 22, 2019)*

Note*:* Respondent is one of the Coconut Industry Investment Fund holding companies. Therefore, respondent, including its SMC shares, are government-owned and excluded from petitioner's taxing powers.

Deficiency Interests applies on all taxes under the NIRC and not simply to deficiency income, estate and donor's tax.

Petitioner claims that deficiency interest under Section 249(B) of the Tax Code applies only whenever there are deficiency income tax, deficiency estate tax, and/or deficiency donor's tax. The imposition is limited only to those 3 types of taxes.

The Court held that Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on all taxes under the NIRC. The law is clear. There is no room left for interpretation, the law does not limit these additions only to the three (3) types of internal revenue taxes, namely, income, estate and donor's tax. Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax, other percentage taxes, excise tax and documentary stamp tax. *(E.E. Black LTD. Philippine Branch v. Commissioner of Internal Revenue, CTA EB No. 1611 (CTA No. 8719), January 22, 2019)*

A taxpayer must establish that it supplies services to foreign corporation in order to prove that its transactions are subject to zero-rated VAT.

Petitioner filed with respondent an application for refund/tax credit of its excess and unutilized input VAT. According to Petitioner, as a duly registered ROHQ, it performs qualifying services to its non-resident foreign affiliates, subsidiaries and branches in the Asia Pacific Region and in other foreign markets making its transaction Zero-rated. A taxpayer must establish that it supplies services to foreign corporation in order to prove that its transactions are subject to zero-rated VAT.

The Court ruled that each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/ partnership and proof of incorporation, association or registration in a foreign country *(e.g.,* Certificate or Articles of Foreign Incorporation, Certificate of Registration of a Foreign Company and a printed screenshots of United States Securities and Exchange Commission (or the official regulatory body of a particular jurisdiction) website showing the state/province/ country where the entity was organized or any other equivalent document) to be considered as a non-resident foreign corporation doing business outside the Philippines. *(AIG Shared Services Corporation (Philippines) v. Commissioner of Internal Revenue, CTA No. 9100, January 24, 2019)*

Note: The Court ruled that aside from an SEC Certificate issued by the government agency of the foreign country, a printed screenshot of the website of the foreign official regulatory body is sufficient to establish that the client is a foreign corporation.

CTA has jurisdiction over a petition to invalidate and annul the distraint or garnishment orders issued by the CIR.

Petitioner received a Letter from UCPB informing it that its deposit with the said bank in has been garnished by respondent. The Warrant of Garnishment was issued pursuant to an Assessment. Petitioner filed a Petition for Review and respondent filed a Motion to Dismiss claiming that the Court has no jurisdiction on the ground that the Warrant of Garnishment is not a decision contemplated under Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

The Court held that CTA has jurisdiction over the case because it falls within the CTA's jurisdiction over "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue", which includes acting on a petition to invalidate and annul the distraint or garnishment orders of respondent CIR. Petitioner raised as an issue the validity of the assessment of alleged deficiency taxes which falls under the category of "other matters." Hence, CTA has jurisdiction over this case. *(First Balfour, Inc. v. Commissioner of Internal Revenue, CTA No. 8984, January 25, 2019)*

Note: The case also discussed the failure of the respondent to prove receipt of the assessment by the Petitioner. Such failure leads to the conclusion that no assessment was issued and that the right to due process of petitioner was violated when respondent issued a Warrant of Garnishment without prior notice to the respondent.

No need to prove "Actual shipment of goods from the Philippines" for export sales under the Omnibus Investment Code and other special laws.

Taxpayer filed an application for Tax Credits with the BIR representing unutilized or unapplied creditable input VAT arising from their transaction with PGRC (a BOI-registered producer of gold and silver ore). It alleged that since PGPRC is a BOI-registered producer of gold and silver ore, the transactions are considered export sales. BIR alleged that BOI's certification is insufficient to prove that there was actual shipment of FRC's goods from the Philippines to a foreign country.

The Court ruled that Section 106(A)(2)(a)(5) or those considered export sales under the Omnibus Investment Code and other special laws does not require that there be an *"actual shipment of goods from the Philippines."* The implementing Rules also does not provide the requirement of "actual shipment". The texts of *both* the law and the implementing regulations clearly do not provide for this requirement. Hence, the transaction in this case is considered export sales subject to zero-rated VAT. *(Commissioner of Internal Revenue v. Filminera Resources Corporation, CTA EB No. 1681(CTA No. 8938), January 28, 2019)*

Written protest is necessary within the 60-day period from receipt of notice of assessment issued by the local treasurer, to avoid the assessment lapse into finality.

Petitioner was assessed by Makati City for deficiency Local Business Tax. Without filing a Protest, petitioner paid the tax and subsequently filed an administrative claim for refund. The City of Makati filed a Motion to Dismiss, arguing that the subject assessments have become final, executory, conclusive, and unappealable for failure of the petitioner to file a protest of the assessment issued.

The Court ruled that in case there is a notice of assessment issued by the local treasurer against a taxpayer, and even when the latter disagrees therewith, still opts to pay the assessed tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties, such taxpayer must still file a written protest within the 60-day period, and then bring the case to court within 30 days, pursuant to Section 195 of the LGC of 1991. There being two (2) notices of assessment issued by respondents, and since petitioner opted to pay the amounts assessed, petitioner should have observed the provisions of Section 195 of the LGC of 1991. Taxpayer failed to protest the subject tax assessments so they have become final and unappealable and its validity or correctness may no longer be questioned. *(Metro Pacific Tollways Development Corporation v. Makati City and Nelia A. Barlis, in Her Capacity as Incumbent City Treasurer of Makati City, CTA AC No. 191, January 29, 2019)*

The presumption of regularity in the ordinary course of mail is merely disputable.

Petitioner filed a Protest on the ground that BIR did not issue a Final Assessment Notice (FAN) violating its right to due process. Accordingly, the FAN is invalid against Petitioner and should not be enforced.

The Court ruled that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice, which was timely released, mailed and sent. Thus, the presumption of regularity in the ordinary course of mail is merely disputable, and when the taxpayer-addressee denies the receipt of the disputed assessment, the burden of proof is now shifted to Respondent to present and offer evidence to prove that the same was duly delivered and indeed received by the taxpayer-addressee.

Here, the receipts for registered letters and return receipts presented do not prove themselves so they must be properly authenticated in order to serve as proof of receipt of the letters. Respondent failed to authenticate the identity and authority of the person whose signature appears on the registry return receipt. Clearly, Respondent failed to prove that Assessment Notice had been actually served and received by Petitioner or its duly authorized agent rendering the assessment void. *(Xylem Water Systems International, Inc. (former Gould Pumps [N.Y] Inc.) v. Commissioner of Internal Revenue, CTA No. 8901, January 31, 2019)*