Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 202695**
	Present:
	VELASCO, JR., *J.*, *Chairperson,*
	PERALTA,
- versus -	PEREZ,
	REYES, and
	PERLAS-BERNABE,* *JJ.*
GJM PHILIPPINES MANUFACTURING, INC., Respondent.	**Promulgated:**
	February 29, 2016

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D E C I S I O N

PERALTA, *J.*:

For resolution is a Petition for Review under Rule 45 of the Rules of Court which petitioner Commissioner of Internal Revenue (*CIR*) filed, praying for the reversal of the Decision[1] of the Court of Tax Appeals (*CTA*) *En Banc* dated March 6, 2012 and its Resolution[2] dated July 12, 2012 in CTA EB CASE No. 637. The CTA *En Banc* affirmed the Decision[3] of the CTA First Division dated January 26, 2010 and its Resolution[4] dated May 4, 2010 in favor of respondent GJM Philippines Manufacturing, Inc. (*GJM*).

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

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* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

1 Penned by Associate Justice Lovell R. Bautista; unanimous; *rollo*, pp. 35-53.

2 *Id.* at 55-59.

3 Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta, and Associate Justice Esperanza R. Fabon-Victorino; concurring.

4 *Id.*

On April 12, 2000, GJM filed its Annual Income Tax Return for the year 1999. Thereafter, its parent company, Warnaco (HK) Ltd., underwent bankruptcy proceedings, resulting in the transfer of ownership over GJM and its global affiliates to Luen Thai Overseas Limited in December 2001. On August 26, 2002, GJM informed the Revenue District Officer of Trece Martirez, through a letter, that on April 29, 2002, it would be canceling its registered address in Makati and transferring to Rosario, Cavite, which is under Revenue District Office (*RDO*) No. 54. On August 26, 2002, GJM's request for transfer of its tax registration from RDO No. 48 to RDO No. 54 was confirmed through Transfer Confirmation Notice No. OCN ITR 000018688.

On October 18, 2002, the Bureau of Internal Revenue (*BIR*) sent a letter of informal conference informing GJM that the report of investigation on its income and business tax liabilities for 1999 had been submitted. The report disclosed that GJM was still liable for an income tax deficiency and the corresponding 20% interest, as well as for the compromise penalty in the total amount of ₱1,192,541.51. Said tax deficiency allegedly resulted from certain disallowances/understatements, to wit: (a) Loading and Shipment/Freight Out in the amount of ₱2,354,426.00; (b) Packing expense, ₱8,859,975.00; (c) Salaries and Wages, ₱2,717,910.32; (d) Staff Employee Benefits, ₱1,191,965.87; and (e) Fringe Benefits Tax, in the amount of ₱337,814.57. On October 24, 2002, GJM refuted said findings through its Financial Controller.

On February 12, 2003, the Bureau of Internal Revenue (*BIR*) issued a Pre-Assessment Notice and Details of Discrepancies against GJM. On April 14, 2003, it issued an undated Assessment Notice, indicating a deficiency income tax assessment in the amount of ₱1,480,099.29. On July 25, 2003, the BIR issued a Preliminary Collection Letter requesting GJM to pay said income tax deficiency for the taxable year 1999. Said letter was addressed to GJM's former address in Pio del Pilar, Makati. On August 18, 2003, although the BIR sent a Final Notice Before Seizure to GJM's address in Cavite, the latter claimed that it did not receive the same.

On December 8, 2003, GJM received a Warrant of Distraint and/or Levy from the BIR RDO No. 48-West Makati. The company then filed its Letter Protest on January 7, 2004, which the BIR denied on January 15, 2004. Hence, GJM filed a Petition for Review before the CTA.

On January 26, 2010, the CTA First Division rendered a Decision in favor of GJM, the dispositive portion of which reads:

> **WHEREFORE**, the deficiency income tax assessment in the amount of ₱1,480,099.29, inclusive of interest, for taxable year 1999, covered by Formal Assessment Notice No. IT-17316-99-03-282 and the Warrant of Distraint and/or Levy dated November 27, 2003, both issued against petitioner by respondent, are hereby **CANCELLED** and **WITHDRAWN**.
>
> Accordingly, respondent is hereby **ORDERED** to cease and desist from implementing the said assessment and Warrant.
>
> **SO ORDERED**.[5]

When its Motion for Reconsideration was denied, the CIR brought the case to the CTA *En Banc*.

On March 6, 2012, the CTA *En Banc* denied the CIR's petition, thus:

> **WHEREFORE**, the Petition for Review is hereby **DENIED**. Accordingly, the impugned Decision dated January 26, 2010 and Resolution dated May 4, 2010 are hereby **AFFIRMED** *in toto*.
>
> **SO ORDERED.**[6]

The CIR filed a Motion for Reconsideration but the same was denied for lack of merit. Thus, the instant petition.

The CIR raised the following issues:

> I.
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> WHETHER OR NOT THE FORMAL ASSESSMENT NOTICE (FAN) FOR DEFICIENCY INCOME TAX ISSUED TO GJM FOR TAXABLE YEAR 1999 WAS RELEASED, MAILED, AND SENT WITHIN THE THREE (3)-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE NIRC OF 1997.
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> II.
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> WHETHER OR NOT THE BIR'S RIGHT TO ASSESS GJM FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 1999 HAS ALREADY PRESCRIBED.

The petition lacks merit.

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5 *Rollo*, p. 44. (Emphasis in the original)

6 *Id.* at 52. (Emphasis in the original)

Section 203 of the 1997 National Internal Revenue Code (*NIRC*), as amended, specifically provides for the period within which the CIR must make an assessment. It provides:

> 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. (Emphasis supplied)

Thus, the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes. Here, GJM filed its Annual Income Tax Return for the taxable year 1999 on April 12, 2000. The three (3)-year prescriptive period, therefore, was only until April 15, 2003. The records reveal that the BIR sent the FAN through registered mail on April 14, 2003, well-within the required period. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period.[7] GJM, however, denies ever having received any FAN.

If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[8] Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.[9]

To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and

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7 *Collector of Internal Revenue v. Bautista*, 105 Phil. 1326, 1327 (1959).
8 *CIR v. Metro Star Superama*, Inc., 652 Phil. 172, 181 (2010).
9 *Id.*

any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.[10]

The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. The CIR offered in evidence Transmittal Letter No. 282 dated April 14, 2003 prepared and signed by one Ma. Nieva A. Guerrero, as Chief of the Assessment Division of BIR Revenue Region No. 8-Makati, to show that the FAN was actually served upon GJM. However, it never presented Guerrero to testify on said letter, considering that GJM vehemently denied receiving the subject FAN and the Details of Discrepancies. Also, the CIR presented the Certification signed by the Postmaster of Rosario, Cavite, Nicarter Looc, which supposedly proves the fact of mailing of the FAN and Details of Discrepancy. It also adduced evidence of mail envelopes stamped February 17, 2003 and April 14, 2003, which were meant to prove that, on said dates, the Preliminary Assessment Notice (*PAN*) and the FAN were delivered, respectively. Said envelopes also indicate that they were posted from the Makati Central Post Office. However, according to the Postmaster's Certification, of all the mail matters addressed to GJM which were received by the Cavite Post Office from February 12, 2003 to September 9, 2003, only two (2) came from the Makati Central Post Office. These two (2) were received by the Cavite Post Office on February 12, 2003 and May 13, 2003. But the registered mail could not have been the PAN since the latter was mailed only on February 17, 2003, and the FAN, although mailed on April 14, 2003, was not proven to be the mail received on May 13, 2003. The CIR likewise failed to show that said mail matters received indeed came from it. It could have simply presented the registry receipt or the registry return card accompanying the envelope purportedly containing the assessment notice, but it offered no explanation why it failed to do so. Hence, the CTA aptly ruled that the CIR failed to discharge its duty to present any evidence to show that GJM indeed received the FAN sent through registered mail on April 14, 2003.

The Court wishes to note and reiterate that it is not a trier of facts. The CIR mainly raised issues on factual findings which have already been

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10 *Id.*

thoroughly discussed below by both the CTA First Division and the CTA *En Banc*. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. This Court recognizes that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect. It has been the Court's long-standing policy and practice to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases.[11]

The Court hereby sustains the order of cancellation and withdrawal of the Formal Assessment Notice No. IT-17316-99-03-282, and the Warrant of Distraint and/or Levy dated November 27, 2003.

WHEREFORE, PREMISES CONSIDERED, the petition is **DENIED**. The Decision of the Court of Tax Appeals *En Banc* dated March 6, 2012 and its Resolution dated July 12, 2012 in CTA EB CASE No. 637 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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[11] *CIR v. Meralco*, G.R. No. 181459, June 9, 2014, 725 SCRA 384, 401.

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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