FIRST DIVISION

BARCELON, ROXAS SECURITIES, INC. (now known as UBP Securities, Inc.) Petitioner,	**G. R. No. 157064** Present: PANGANIBAN, *C.J.*, Chairman, YNARES-SANTIAGO AUSTRIA-MARTINEZ, CALLEJO, SR., and CHICO-NAZARIO, *JJ.*
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: August 7, 2006

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D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, seeking to set aside the Decision of the Court of Appeals in CA-G.R. SP No. 60209 dated 11 July 2002,[1] ordering the petitioner to pay the Government the amount of ₱826,698.31 as deficiency income tax for the year 1987 plus 25% surcharge and 20% interest per annum. The Court of Appeals, in its assailed Decision, reversed the Decision of the Court of Tax Appeals (CTA) dated 17 May 2000[2] in C.T.A. Case No. 5662.

Petitioner Barcelon, Roxas Securities Inc. (now known as UBP Securities, Inc.) is a corporation engaged in the trading of securities. On 14 April 1988, petitioner filed its

Annual Income Tax Return for taxable year 1987. After an audit investigation conducted by the Bureau of Internal Revenue (BIR), respondent Commissioner of Internal Revenue (CIR) issued an assessment for deficiency income tax in the amount of ₱826,698.31 arising from the disallowance of the item on salaries, bonuses and allowances in the amount of ₱1,219,093,93 as part of the deductible business expense since petitioner failed to subject the salaries, bonuses and allowances to withholding taxes. This assessment was covered by Formal Assessment Notice No. FAN-1-87-91-000649 dated 1 February 1991, which, respondent alleges, was sent to petitioner through registered mail on 6 February 1991. However, petitioner denies receiving the formal assessment notice.[3]

On 17 March 1992, petitioner was served with a Warrant of Distraint and/or Levy to enforce collection of the deficiency income tax for the year 1987. Petitioner filed a formal protest, dated 25 March 1992, against the Warrant of Distraint and/or Levy, requesting for its cancellation. On 3 July 1998, petitioner received a letter dated 30 April 1998 from the respondent denying the protest with finality.[4]

On 31 July 1998, petitioner filed a petition for review with the CTA. After due notice and hearing, the CTA rendered a decision in favor of petitioner on 17 May 2000. The CTA ruled on the primary issue of prescription and found it unnecessary to decide the issues on the validity and propriety of the assessment. It maintained that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption. It reasoned that the direct denial of the petitioner shifts the burden of proof to the respondent that the mailed letter was actually received by the petitioner. The CTA found the BIR records submitted by the respondent immaterial, self-serving, and therefore insufficient to prove that the assessment notice was mailed and duly received by the petitioner.[5] The dispositive portion of this decision reads:

> WHEREFORE, in view of the foregoing, the 1988 deficiency tax assessment against petitioner is hereby CANCELLED. Respondent is hereby ORDERED TO DESIST from collecting said deficiency tax. No pronouncement as to costs.[6]

On 6 June 2000, respondent moved for reconsideration of the aforesaid decision but was denied by the CTA in a Resolution dated 25 July 2000. Thereafter, respondent appealed to the Court of Appeals on 31 August 2001. In reversing the CTA decision, the Court of Appeals found the evidence presented by the respondent to be sufficient proof that the tax assessment notice was mailed to the petitioner, therefore the legal presumption that it was received should apply.[7] Thus, the Court of Appeals ruled that:

> WHEREFORE, the petition is hereby GRANTED. The decision dated May 17, 2000 as well as the Resolution dated July 25, 2000 are hereby REVERSED and SET ASIDE, and a new on entered ordering the respondent to pay the amount of ₱826,698.31 as deficiency income tax for the year 1987 plus 25% surcharge and 20% interest per annum from February 6, 1991 until fully paid pursuant to Sections 248 and 249 of the Tax Code.[8]

Petitioner moved for reconsideration of the said decision but the same was denied by the Court of Appeals in its assailed Resolution dated 30 January 2003.[9]

Hence, this Petition for Review on *Certiorari* raising the following issues:

I

WHETHER OR NOT LEGAL BASES EXIST FOR THE COURT OF APPEALS' FINDING THAT THE COURT OF TAX APPEALS COMMITTED "GROSS ERROR IN THE APPRECIATION OF FACTS."

II

WHETHER OR NOT THE COURT OF APPEALS WAS CORRECT IN REVERSING THE SUBJECT DECISION OF THE COURT OF TAX APPEALS.

III

WHETHER OR NOT THE RIGHT OF THE BUREAU OF INTERNAL REVENUE TO ASSESS PETITIONER FOR ALLEGED DEFICIENCY INCOME TAX FOR 1987 HAS PRESCRIBED.

IV

WHETHER OR NOT THE RIGHT OF THE BUREAU OF INTERNAL REVENUE TO COLLECT THE SUBJECT ALLEGED DEFICIENCY INCOME TAX FOR 1987 HAS

PRESCRIBED.

V

WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY INCOME TAX ASSESSMENT FOR 1987.

VI

WHETHER OR NOT THE SUBJECT ASSESSMENT IS VIOLATIVE OF THE RIGHT OF PETITIONER TO DUE PROCESS.[10]

This Court finds the instant Petition meritorious.

The core issue in this case is whether or not respondent's right to assess petitioner's alleged deficiency income tax is barred by prescription, the resolution of which depends on reviewing the findings of fact of the Court of Appeals and the CTA.

While the general rule is that factual findings of the Court of Appeals are binding on this Court, there are, however, recognized exceptions[11] thereto, such as when the findings are contrary to those of the trial court or, in this case, the CTA.[12]

In its Decision, the CTA resolved the issues raised by the parties thus:

> Jurisprudence is replete with cases holding that if the taxpayer denies ever 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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> > "The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57

citing *Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).*"

In the instant case, Respondent utterly failed to discharge this duty. No substantial evidence was ever presented to prove that the assessment notice No. FAN-1-87-91-000649 or other supposed notices subsequent thereto were in fact issued or sent to the taxpayer. As a matter of fact, it only submitted the BIR record book which allegedly contains the list of taxpayer's names, the reference number, the year, the nature of tax, the city/municipality and the amount (see Exh. 5-a for the Respondent). Purportedly, Respondent intended to show to this Court that all assessments made are entered into a record book in chronological order outlining the details of the assessment and the taxpayer liable thereon. However, as can be gleaned from the face of the exhibit, all entries thereon appears to be immaterial and impertinent in proving that the assessment notice was mailed and duly received by Petitioner. Nothing indicates therein all essential facts that could sustain the burden of proof being shifted to the Respondent. 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. This 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. Thus:

> "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." *(Nava vs. CIR, 13 SCRA 104, January 30, 1965).*
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> The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. (*Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR CTA Case 4885*, August 22, 1996).[13]

Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals*[14] this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such 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.[15] In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

Under Section 203[16] of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista,*[17] this Court held that 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 should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.

In the present case, records show that petitioner filed its Annual Income Tax Return for taxable year 1987 on 14 April 1988.[18] The last day for filing by petitioner of its return was on 15 April 1988,[19] thus, giving respondent until 15 April 1991 within which to send an assessment notice. While respondent avers that it sent the assessment notice dated 1 February 1991 on 6 February 1991, within the three (3)-year period prescribed by law, petitioner denies having received an assessment notice from respondent. Petitioner alleges that it came to know of the deficiency tax assessment only on 17 March 1992 when it was served with the Warrant of Distraint and Levy.[20]

In *Protector's Services, Inc. v. Court of Appeals*,[21] 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,[22] 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.[23]

In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. The respondent presented the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted. The BIR records custodian, Ingrid Versola, also testified that she made the entries therein. Respondent offered the entry in the BIR record book and the testimony of its record custodian as entries in official records in accordance with Section 44, Rule 130 of the Rules of Court,[24] which states that:

> Section 44. *Entries in official records*. - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

The foregoing rule on evidence, however, must be read in accordance with this Court's pronouncement in *Africa v. Caltex (Phil.), Inc.*,[25] where it has been held that an entrant must have personal knowledge of the facts stated by him or such facts were acquired by him from reports made by persons under a legal duty to submit the same.

> There are three requisites for admissibility under the rule just mentioned: (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information x x x.

In this case, the entries made by Ingrid Versola were not based on her personal

knowledge as she did not attest to the fact that she personally prepared and mailed the assessment notice. Nor was it stated in the transcript of stenographic notes[26] how and from whom she obtained the pertinent information. Moreover, she did not attest to the fact that she acquired the reports from persons under a legal duty to submit the same. Hence, Rule 130, Section 44 finds no application in the present case. Thus, the evidence offered by respondent does not qualify as an exception to the rule against hearsay evidence.

Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained. Yet respondent failed to present such evidence.

In the case of *Nava v. Commissioner of Internal Revenue*, [27] this Court stressed on the importance of proving the release, mailing or sending of the notice.

> 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.

In the present case, the evidence offered by the respondent fails to convince this Court that Formal Assessment Notice No. FAN-1-87-91-000649 was released, mailed, or sent before 15 April 1991, or before the lapse of the period of limitation upon assessment and collection prescribed by Section 203 of the NIRC. Such evidence, therefore, is insufficient to give rise to the presumption that the assessment notice was received in the regular course of mail. Consequently, the right of the government to assess and collect the alleged deficiency tax is barred by prescription.

IN VIEW OF THE FOREGOING, the instant Petition is **GRANTED**. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 60209 dated 11 July 2002, is hereby **REVERSED** and **SET ASIDE**, and the Decision of the Court of Tax Appeals in C.T.A.

Case No. 5662, dated 17 May 2000, cancelling the 1988 Deficiency Tax Assessment against Barcelon, Roxas Securitites, Inc. (now known as UPB Securities, Inc.) for being barred by prescription, is hereby REINSTATED. No costs.

SO ORDERED.

MINITA V. CHICO-NAZARIO
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Chief Justice
Chairman

ONSUELO YNARES-SANTIAGO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

C E R T I F I C A T I O N

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.

ARTEMIO V. PANGANIBAN
Chief Justice

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justice Candido Rivera and Associate Justice Sergio Pestaño, concurring. *Rollo*, pp. 12-17.

[2] Id. at 18-28.

[3] Id. at 18.

[4] Id. at 18-19.

[5] Id. at 22-27.

[6] Id. at 27.

[7] Id. at 16-17.

[8] Id. at 17.

[9] CA *rollo*, p. 147.

[10] *Rollo*, pp. 55-56.

[11] Instances when the findings of fact of the trial court and/or Court of Appeals may be reviewed by the Supreme Court are (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Misa v. Court of Appeals*, G.R. No. 97291, 5 August 1992, 212 SCRA 217, 221-222)

[12] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 206 (2001).

[13] *Rollo*, pp. 24-27.

[14] G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446.

[15] *Commissioner of Internal Revenue v. Mitsubishi Metal Corp.*, G.R. Nos. 54908 and 80041, 22 January 1990, 181 SCRA 214, 220.

[16] Section 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in the 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 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.

[17] 105 Phil. 1326, 1327 (1959).

[18] *Rollo*, pp. 14 and 24.

[19] Section 77 (B) of the NIRC states that:
(B) *Time of Filing the Income Tax Return*. - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15^{th}) day of April, or on or before the fifteenth (15^{th}) day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be.

[20] *Rollo*, pp. 53-54.

[21] 386 Phil. 611, 623 (2000).

[22] Section 3(v), Rule 131, of the 1997 Rules of Court provides:

> Sec. 3. *Disputable presumptions*. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> x x x x
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> (v) That a letter duly directed and mailed was received in the regular course of the mail;

[23] *Republic v. Court of Appeals*, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 355.

[24] *Rollo*, p. 56.

[25] 123 Phil. 272, 277 (1966).

[26] Transcript of Stenographic Notes, *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 5662, 25 August 1998, pp. 1-13.

[27] 121 Phil. 117, 123-124 (1965).