Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 225809** Present:
-versus-	LEONEN, *J., Chairperson,* HERNANDO, INTING, DELOS SANTOS, and LOPEZ, J., *JJ.*
SOUTH ENTERTAINMENT GALLERY, INC., Respondent.	**Promulgated:** March 17, 2021

x----------x

DECISION

LEONEN, *J.*:

The warrant of distraint or levy issued by the Commissioner of Internal Revenue constitutes constructive and final denial of respondent's belated protest, from which the 30-day period to appeal to the Court of Tax Appeals should be reckoned. Respondent's petition for review filed after 282 days is time-barred, and should have been dismissed by the Court of Tax Appeals for lack of jurisdiction.

This is a Petition for Review on Certiorari[1] seeking to reverse and set aside the Decision[2] and Resolution[3] of the Court of Tax Appeals En Banc,

---

1 *Rollo*, pp. 11–25. Filed under Rule 45.

2 Id. at 35–48. The January 4, 2016 Decision docketed as CTA EB CASE No. 1246 was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals, Quezon City. With the Dissenting Opinion of Presiding Justice Roman G. Del Rosario, *see rollo* pp. 49–53).

which affirmed the Second Division's Decision.[4] The Court of Tax Appeals cancelled the assessment for deficiency income tax and value-added tax issued against South Entertainment Gallery, Inc. for taxable year 2005, and ordered the Commissioner of Internal Revenue (Commissioner) to withdraw its warrant of distraint and levy.[5]

South Entertainment Gallery, Inc. (South Entertainment) is a corporation engaged in operating and conducting bingo games and other games of chance, pursuant to a Grant of Authority issued by the Philippine Amusement and Gaming Corporation (PAGCOR).[6]

On February 21, 2008, South Entertainment received a Preliminary Assessment Notice[7] dated February 4, 2008, informing it of its tax deficiencies.[8] On April 10, 2008, the Commissioner sent by registered mail a Formal Letter of Demand and Assessment Notice No. 021-R-0604112007 dated April 2, 2008 to respondent.[9] South Entertainment, however, denies receiving the mail.[10] Subsequently, South Entertainment received a Preliminary Collection Letter[11] dated June 10, 2008, demanding payment of its internal revenue tax liabilities of ₱4,067,264.18, with the following details:[12]

Kind of Tax	Tax Due	Surcharge	Interest	Compromise	Total Amount Due
Income Tax	247,216.00		79,521.15	4,000.00	330,737.15
VAT	2,046,399.96	511,735.00	1,119,521.40	20,000.00	3,697,656.36
Withholding	25,077.32		13,793.35		38,870.67
Total	**₱2,318,693.28**	**₱511,735.00**	**₱1,212,835.90**	**₱24,000.00**	**₱4,067,264.18**[13]

South Entertainment replied[14] to the Preliminary Collection Letter informing the Commissioner that it already paid the withholding tax deficiency.[15] With regard to the income tax and value-added tax liabilities,

---

3 Id. at 55–60. The July 22, 2016 Resolution was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals, Quezon City. With the Dissenting Opinion of Presiding Justice Roman G. Del Rosario, *see rollo* pp. 61–66.

4 Id. at 197–211. The July 9, 2014 Decision docketed as CTA CASE No. 8257 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas (on leave) of the Second Division, Court of Tax Appeals, Quezon City.

5 Id. at 210.

6 Id. at 36–37.

7 Id. at 107–108.

8 Id. at 37.

9 Id. at 13.

10 Id.

11 Id. at 109.

12 Id. at 37.

13 Id.

14 Id. at 110–111. Through a letter dated June 19, 2008.

15 Id. at 37.

South Entertainment claimed exemption from any kind and form of taxes invoking PAGCOR's exemption under Presidential Decree No. 1869.[16]

Nonetheless, on June 22, 2010, the Commissioner issued a Warrant of Distraint and/or Levy[17] through the OIC-Revenue District Officer of South Pampanga.[18]

South Entertainment requested the cancellation and withdrawal of the Warrant through a letter[19] dated September 24, 2010.[20] It averred that it did not receive any Final Assessment Notice and it is exempt from income tax and value-added tax liabilities.[21]

On March 25, 2011, South Entertainment received a letter[22] from OIC-Revenue District Officer Amador P. Ducut, reiterating the collection of the deficiency income and value added taxes for 2005.[23]

On March 31, 2011, South Entertainment filed a Petition for Review (With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)[24] with the Court of Tax Appeals.[25] It claimed that the Warrant of Distraint and Levy was premature and invalid because it had not received a Formal Assessment Notice from the Commissioner.[26]

After hearing and South Entertainment's submission of documentary requirements, the Court of Tax Appeals granted the application for a Temporary Restraining Order.[27]

During trial, both parties presented their testimonial and documentary evidence.[28] Upon the filing of the parties' respective memorandum,[29] the Second Division of the Court of Tax Appeals rendered a Decision on July 9, 2014, ruling in favor of South Entertainment.[30] It held that the Commissioner failed to prove that the Final Assessment Notice was indeed received by South Entertainment.[31] The dispositive portion of its Decision reads:

---

16 Id.
17 Id. at 112.
18 Id. at 37.
19 Id. at 113–119.
20 Id. at 37.
21 Id. at 115.
22 Id. at 126.
23 Id. at 37.
24 Id. at 68.
25 Id. at 198.
26 Id. at 73.
27 Id. at 200.
28 Id.
29 Id.
30 Id. at 209–210.
31 Id. at 208–209.

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for deficiency Income Tax and VAT for taxable year 2005 is **CANCELLED and SET ASIDE** and respondent is ordered to withdraw the Warrant of Distraint and Levy dated June 22, 2010.
>
> **SO ORDERED**.[32] (Emphasis in the orginal)

The Commissioner filed a Motion for Reconsideration, but it was denied by the Court of Tax Appeals Second Division in a Resolution[33] dated October 22, 2014.

The Commissioner then filed an appeal, which was likewise denied by the Court of Tax Appeals En Banc in its January 4, 2016 Decision.[34] The En Banc sustained the Division's ruling that the Commissioner failed to prove service of the Final Assessment Notice to South Entertainment.[35] On the issue of jurisdiction raised, the En Banc held that South Entertainment's petition for review was not filed out of time. According to the En Banc, the 30-day reglementary period should be reckoned from March 25, 2011, the date South Entertainment received a Letter from OIC-RDO Amador P. Ducut reiterating the collection of the deficiency taxes;[36] and not from June 22, 2010, the date South Entertainment received the Warrant of Distraint and Levy.[37]

Presiding Justice Roman G. Del Rosario disagreed with the majority. In his Dissenting Opinion, he opined that the 30-day period should be reckoned from respondent's receipt of the Warrant of Distraint and Levy on June 22, 2010, or until July 22, 2010. He explained that the warrant constitutes an act of the Commissioner on "other matters" arising under the National Internal Revenue Code which, pursuant to *Philippine Journalist, Inc. v. CIR*,[38] may be the subject of an appropriate appeal with the Court of Tax Appeals.[39]

Presiding Justice Del Rosario pointed out that it took respondent a period of 99 days to question the issuance of the Warrant before the Bureau of Internal Revenue and 282 days before it appealed to the Court of Tax Appeals.[40] Hence, by operation of law, the Warrant of Distraint and Levy

---

32 Id. at 209–210.

33 Id. at 231–232. The Resolution was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas of the Second Division, Court of Tax Appeals, Quezon City.

34 Id. at 46.

35 Id. at 38.

36 Id. at 46.

37 Id. at 43.

38 488 Phil. 218 (2004) [Per J. Ynares-Santiago, En Banc].

39 *Rollo*, p. 52.

40 Id.

has attained finality and the Court of Tax Appeals had no more jurisdiction to act upon the petition for review filed beyond the reglementary period.[41]

Presiding Justice Del Rosario stressed that to uphold the majority view "would result in the mischievous consequence of a revenue official's responsibility to reply to a taxpayer's communication as constitutive of an extension of the reglementary period of appeal. The right to appeal is not a constitutional right but merely a statutory right, which may not be casually ignored by a revenue official[.]"[42]

The Commissioner filed a motion for reconsideration, which the Court of Tax Appeals En Banc denied in its July 22, 2016 Resolution.[43] The En Banc ruled that the Warrant of Distraint and Levy cannot be considered the final act of the Commissioner from which the counting of the statutory period to appeal must be reckoned because: (1) it was not the last response received by South Entertainment from the Commissioner;[44] and (2) there was no final, executory, and demandable assessment, which the taxpayer could protest, since the subject Final Assessment Notice was not duly served upon South Entertainment.[45]

Maintaining his dissent,[46] Presiding Justice Del Rosario reiterated his position that the South Entertainment's petition for review was filed out of time, and consequently, the Warrant of Distraint and Levy has attained finality.[47] He further stated that the Commissioner proved that the Final Assessment Notice was duly served upon South Entertainment in the regular course of the mail.[48] Presiding Justice Del Rosario observed:

> Truth to tell, other than its self-serving and blanket denial of receipt of the FAN, there is nothing on record which will show that SEGI presented rebutting evidence to prove that it did not actually receive the FAN. In fact, what is telling here is despite SEGI's insistence that it did not receive the FAN, and consequently, it could not have become valid, final, executory and demandable, SEGI actually paid the deficiency withholding tax assessment after receiving the Preliminary Collection Letter from the CIR in 2008[.][49]

Hence, the Commissioner filed this Petition. In compliance with this Court's Resolution,[50] respondent filed its Comment,[51] and the petitioner her Reply.[52]

---

41 Id.
42 Id.
43 Id. at 59.
44 Id. at 57.
45 Id. at 58.
46 Id. at 61–66.
47 Id. at 61.
48 Id. at 64.
49 Id.
50 Id. at 316, November 9, 2016 Resolution.

Petitioner contends that the reckoning of the 30-day period to appeal under Republic Act No. 1125, as amended by Republic Act No. 9282 should be from June 22, 2010 when respondent received the Warrant of Distraint and Levy.[53] Hence, respondent's petition for review filed on March 31, 2011, or 282 days after it received the warrant, was clearly filed out of time, and the Court of Tax Appeals had no jurisdiction to act on the appeal.[54]

Petitioner further assails the Court of Tax Appeals En Banc's finding that the Warrant of Distraint and Levy was void because the Final Assessment Notice was not properly served upon respondent. She contends that enough testimonial[55] and documentary[56] evidence were presented to prove that the Formal Letter of Demand and Assessment Notice No. 021-R-0604112007 dated April 2, 2008 was indeed served and received by the addressee.[57] She adds that the records of the Bureau of Posts that she presented in evidence are *prima facie* proof that the Final Assessment Notice had been delivered to and received by respondent.[58] Official duty is presumed to have been regularly performed unless rebutted by competent proof.[59]

---

51 Id. at 318–331.

52 Id. at 336–346.

53 Id. at 17.

54 Id. at 17–18.

55 Id. at 185–187, Judicial Affidavit of Ronnie SJ Ocampo; 195–196, Judicial Affidavit of Brian S. David; and 20–21, Petition for Review on Certiorari, where the following were presented as witnesses:
(i) BIR Administrative Aide VI Ronnie SJ Ocampo who testified that: (a) he was the one who actually placed the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) No. 021-R-0604112007 dated April 2, 2008 issued against South Entertainment Gallery Inc. into the sealed envelope and actually delivered the said mail matter to the Post Office of San Fernando, Pampanga. The FLD and FAN were sent through registered mail under Registry Receipt No. 853, addressed to respondent on April 10, 2008; and (b) that Registry Receipt No. 853 was received by Brian David on April 14, 2012 (should be 2008, *see rollo* p. 187), as shown in the Registry Return Card;
(ii) Postman II Emelito M. Victoria who testified that all matters addressed to tenants of SM City Pampanga are received through SM Warehouse by Warehouse Assistant Brian David who receives such mail matters for the tenants and that he issued a Certification dated February 7, 2012 stating that he delivered Registered Mail No. 853, addressed to respondent and posted on April 10, 2008, and was received by Brian David on April 14, 2008 in SM City Pampanga; and
(iii) SM City Pampanga Warehouse Assistant Brian S. David who testified that as part of his functions, he receives mail matters and other documents for distribution to tenants of SM City Pampanga, and confirmed that the handwriting in the Registry Return Card is his own handwriting; that he in turn gave these mail matters to a contractor personnel who delivers them to their respective addressees-tenants, the acknowledgment of which is evidenced by the signature on a logbook; that South Entertainment Gallery Inc. is one of the tenants of SM City Pampanga.

56 Id. at 178–180 and 21, where the following documents were presented:
(i) Registry Return Card addressed to respondent, which was received by Brian David on April 14, 2008;
(ii) Delivery Book;
(iii) Receipt by Brian David on April 14, 2008;
(iv) Certification dated February 7, 2012 by the letter carrier, Postman II Emelito Victoria;
(v) Registry Receipt No. 853;
(vi) Return Card; and
(vii) Records of Registered Mail dated April 10, 2008.

57 Id. at 20.

58 Id. at 22.

59 Id.

Respondent counters that the deficiency tax assessments were not valid and are deemed non-existent since no Formal Letter of Demand and Assessment Notice was received by it. Consequently, there is no legal basis for the collection of any deficiency tax.[60]

Arguing for the timeliness of its petition for review, respondent asserts that the "decision" appealable to the Court of Tax Appeals is the Memorandum dated February 3, 2011, which it received on March 3, 2011 or the Letter dated March 25, 2011 with attached Memorandum dated February 3, 2011, which it received on even date. Thus, reckoning the 30-day period from these dates, its petition for review was timely filed.[61]

Finally, respondent contends that "[t]he law, regulation and jurisprudence require the service of the [Final Assessment Notice] upon the taxpayer or at least, upon its agent, and not upon any other person."[62] As found by the Court of Tax Appeals, petitioner "failed to establish by competent evidence" that the Final Assessment Notice was actually received by respondent.[63] Respondent adds that the testimonial and documentary evidence of petitioner reveals that the mail matter under Registry Receipt No. 853 was received by a certain Brian David at the warehouse in the ground floor of SM City Pampanga, not by respondent in its registered address at the 3rd floor of the same mall.[64] Petitioner has never established that Brian David was authorized to receive the Final Assessment Notice or any mail matter addressed to respondent.[65]

In her Reply, petitioner argues that the subject of respondent's appeal is the validity of the Warrant of Distraint and Levy, which is subsumed under "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]"[66] Hence, the period to appeal the Warrant ended as early as July 22, 2010, 30 days after respondent received the Warrant on June 22, 2010, pursuant to Section 11 of Republic Act No. 1125, as amended.[67] She adds that the cases[68] cited by respondent were inapplicable because those cases pertained to a decision on a disputed assessment.[69]

---

60 Id. at 320.
61 Id. at 324.
62 Id. at 328.
63 Id. at 327.
64 Id. at 327–328.
65 Id. at 328.
66 Id. at 336.
67 Id. at 337.
68 Namely: *Surigao Electric Co., Inc. v. Court of Tax Appeals*, 156 Phil. 517 (1974) [Per J. Castro, First Division]; *Advertising Associates, Inc. v. Court of Appeals*, 218 Phil. 730 (1984) [Per J. Aquino, Second Division]; and *CIR v. Union Shipping Corp.*, 264 Phil. 132 (1990) [Per J. Paras, Second Division].
69 *Rollo*, p. 338.

Petitioner maintains that everything reasonable was done to trace the whereabouts of the mail sent to respondent and presented enough evidence to discharge its burden of proving that respondent received the Final Assessment Notice in the due course of the mail.[70] Even assuming that respondent's self-serving denial of its receipt is true, the assessment for deficiency taxes is not voided on this account per se since respondent was adequately informed of the basis of the assessment.[71] Respondent received a Preliminary Assessment Notice dated February 4, 2008, which stated the facts and the law, rules and regulations on which the assessment is based;[72] and after receiving petitioner's preliminary collection letter dated June 10, 2008, which referred to the Final Assessment Notice issued on April 2, 2008, respondent paid the deficiency withholding taxes.[73]

The issues for this Court's resolution are (1) whether or not the Court of Tax Appeals committed a reversible error when it ruled that it had jurisdiction over respondent's petition for review; and (2) whether it erred in affirming the Second Division's ruling that petitioner failed to prove the service of the Final Assessment Notice to respondent.

The Petition has merit.

I

The jurisdiction of the Court of Tax Appeals is governed by Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, the pertinent portion of which, provides:

> SECTION 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
>
> 1. *Decisions* of the Commissioner of Internal Revenue *in cases involving disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, *or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue*[.] (Emphasis supplied)

The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be *disputed* by the taxpayer.[74] This is made by filing a request for reconsideration or reinvestigation with the Bureau of Internal Revenue within 30 days from receipt of the assessment, stating the reasons therefor and submitting such proof as may be necessary. The protest

---

70 Id. at 340.
71 Id. at 341.
72 Id. at 342.
73 Id. at 343.
74 *See Commissioner of Internal Revenue v. Villa*, 130 Phil. 3 (1968) [Per J. Bengzon, J.P., En Banc].

must be ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals.[75] If the protest is denied or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days from receipt of the decision or from the lapse of the 180-day period. Failure to comply with the 30-day period would deprive the Court of Tax Appeals of jurisdiction to hear and try the case.[76]

On the other hand, if the taxpayer fails to file a valid protest against the assessment within 30 days from date of receipt thereof, the assessment becomes final, executory, and demandable.[77]

In this case, the Formal Letter of Demand and Final Assessment Notice dated April 2, 2008 was sent by registered mail to the respondent on April 10, 2008. Petitioner did not receive any response from respondent. Thus, petitioner sent a Preliminary Collection Letter dated June 10, 2008.[78]

The Preliminary Collection Letter had a tenor of finality. It made reference to the Formal Letter of Demand and Final Assessment Notice dated April 2, 2008 issued and sent to respondent for the collection of its internal revenue tax liabilities. Respondent was directed to pay the tax liabilities within 10 days from receipt, with a warning that should it fail to do so, petitioner will initiate collection through administrative summary remedies without further notice.[79]

In its June 19, 2008 letter–reply to the Preliminary Collection Letter, respondent stated that it had already paid the withholding tax deficiency and raised its exemption from income tax and VAT deficiencies as PAGCOR licensees. While it essentially assailed the correctness of the deficiency assessments, it *did not raise its non-receipt of the Formal Letter of Demand and Final Assessment Notice.*[80]

In the absence of a timely protest from respondent, it was then reasonable for petitioner to presume that the Formal Letter of Demand and Final Assessment Notice had become final, executory, and demandable. Respondent's protest in its June 19, 2008 letter was belatedly raised. On

---

75 *Commissioner of Internal Revenue v. Villa,* 130 Phil. 3 (1968) [Per J. Bengzon, J.P., En Banc]; and *St. Stephen's Association, et al. vs. The Collector of Internal Revenue,* 104 Phil. 314 (1958) [Per J. Reyes, J.B.L., En Banc].

76 *Surigao Electric Co., Inc. v. Court of Tax Appeals,* 156 Phil. 517 (1974) [Per J. Castro, First Division].

77 Revenue Regulations No. 12-99 (1999), sec. 3.1.5, pursuant to the provisions of the 1997 National Internal Revenue Code, sec. 228.

78 *Rollo,* p. 13.

79 Id. at 109.

80 Id. at 110–111.

June 22, 2010, a Warrant of Distraint and Levy was issued and served against respondent.[81]

The Warrant of Distraint and Levy on June 22, 2010 constitutes a constructive denial or rejection of respondent's claim in its June 19, 2008 letter. It is petitioner's final decision on respondent's belated protest that is appealable to the Court of Tax Appeals. Respondent should have filed its appeal to the Court of Tax Appeals within 30 days from June 22, 2010, or on July 22, 2010, but it failed to do so. Instead, respondent filed a request[82] for withdrawal and cancellation of the Warrant of Distraint and Levy **on September 29, 2010**, or **99 days** from receipt of the Warrant.

If the Commissioner will deny the protest, Revenue Regulations No. 12-99 expressly provides that:

> *The decision of the Commissioner or his duly authorized representative shall:* (a) *state* the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void, in which case, the same shall not be considered a decision on a disputed assessment; and (b) *that the same is his final decision.* (Emphasis supplied)

The foregoing rule prescinds from this Court's dictum in the old case of *Surigao Electric Co., Inc. v. Court of Tax Appeals,*[83] and reiterated in *Commissioner of Internal Revenue v. Union Shipping Corp.*,[84] that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes their final determination of the disputed assessment in order for the taxpayer to know when its right to appeal accrues. Thus:

> [W]e deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this *indicium* indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful

---

81 Id. at 112.
82 Id. at 113–119.
83 156 Phil. 517 (1974) [Per J. Castro, First Division].
84 264 Phil. 132 (1990) [Per J. Paras, Second Division].

> and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.[85]

In *Surigao*, an exchange of correspondence between Surigao Electric Co. and the Commissioner ensued after the former protested a deficiency franchise tax assessment. The controversy culminated in a revised assessment dated April 29, 1963, which was received by Surigao Electric Co. on May 8, 1963. It requested a recomputation of the revised assessment in a letter dated June 6, 1963. On July 16, 1963, Surigao Electric Co. received the Commissioner's letter denying the request for recomputation. On August 1, 1963 the taxpayer appealed to the Court of Tax Appeals, which dismissed the appeal since it was time-barred. This Court affirmed the dismissal of the appeal and held that the Commissioner's letter dated April 29, 1963 embodied the decision or ruling appealable to the tax court. We explained:

> A close reading of the numerous letters exchanged between the petitioner and the Commissioner clearly discloses that the letter of demand issued by the Commissioner on April 29, 1963 and received by the petitioner on May 8, 1963 constitutes the definite determination of the petitioner's deficiency franchise tax liability or the decision on the disputed assessment and, therefore, the decision appealable to the tax court. This letter of April 29, 1963 was in response to the communications of the petitioner, particularly the letter of August 2, 1962 wherein it assailed the 4th Indorsement's data and findings on its deficiency franchise tax liability computed at 5% (on the ground that its franchise precludes the imposition of a rate higher than the 2% fixed in its legislative franchise), and the letter of April 24, 1963 wherein it again questioned the assessment and requested for a recomputation (on the ground that the Government could make an assessment only for the period from May 29, 1956 to June 30, 1959). Thus, as early as August 2, 1962, the petitioner already disputed the assessment made by the Commissioner.
>
> Moreover, the letter of demand dated April 29, 1963 unquestionably constitutes the *final action* taken by the Commissioner on the petitioner's several requests for reconsideration and recomputation. In this letter, the Commissioner not only in effect demanded that the petitioner pay the amount of P11,533.53 but also gave warning that in the event it failed to pay, the said Commissioner would be constrained to enforce the collection thereof by means of the remedies provided by law. The tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicates the final nature of the determination made by the Commissioner of the petitioner's deficiency franchise tax liability.[86]

---

[85] *Surigao Electric Co., Inc. v. Court of Tax Appeals,* 156 Phil. 517, 522–523 (1974) [Per J. Castro, First Division].

[86] Id. at 520.

This Court further held that to sustain Surigao Electric Co.'s contention that the Commissioner's June 28, 1963 letter denying its request for recomputation of the revised assessment is the ruling appealable to the Court of Tax Appeals:

> [W]ould, in effect, leave solely to the petitioner's will the determination of the commencement of the statutory thirty-day period, and place the petitioner — and for that matter, any taxpayer — in a position to delay at will and on convenience the finality of a tax assessment. This absurd interpretation espoused by the petitioner would result in grave detriment to the interests of the Government, considering that taxes constitute its life-blood and their prompt and certain availability is an imperative need.[87] (Citation omitted)

It was under the factual backdrop of *Surigao Electric Co., Inc.* that this Court admonished Commissioner to indicate in clear and unequivocal language what constitutes final action on a disputed assessment to avoid repeated requests for reconsideration by the taxpayer. This is also to avoid the taxpayer grope in the dark as to which communication or action from the Bureau of Internal Revenue may be the decision appealable to the tax court.[88]

At any rate, in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, this Court has considered this as an implied denial.[89] The taxpayer's remedy then was to appeal to the Court of Tax Appeals within 30 days from the date that it was notified of the warrant or collection suit.

For instance, in *Commissioner of Internal Revenue v. Isabela Cultural Corporation (ICC)*,[90] ICC was assessed for deficiency income tax by the Commissioner. It moved for reconsideration and filed a letter attaching certain documents in support of its protest. The Commissioner sent a "Final Notice Before Seizure"[91] to ICC demanding payment of the subject assessment within 10 days from receipt thereof, and that failure on its part to do so would constrain the Commissioner to collect the tax assessed through summary remedies of distraint or levy. The notice, however, did not contain a categorical statement that the Commissioner has denied ICC's motion for reconsideration. ICC, nonetheless, filed a petition for review with the Court of Tax Appeals alleging that the final notice of seizure was the Commissioner's final decision. This Court ruled that a final demand from the Commissioner reiterating the immediate payment of a tax deficiency

---

87 Id. at 521–522.
88 Id. at 522–523.
89 *Commissioner of Internal Revenue v. Algue, Inc.*, 241 Phil. 829 (1988) [Per J. Cruz, First Division].
90 413 Phil. 376 (2001) [Per J. Panganiban, Third Division].
91 Id.

previously made, is tantamount to a denial of the protest. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals.

> In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a *final* notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy. How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?[92]

However, in *Commissioner of Internal Revenue v. Union Shipping Corp.*,[93] this Court treated the Commissioner's filing of the collection suit on December 28, 1978, not the issuance of the warrant of distraint and levy on November 25, 1976, as the final action on the disputed assessment, from which the period to appeal commenced to run. In that case, the Commissioner did not rule on the protest earlier filed by Union Shipping Corp., but instead served a warrant of distraint and levy on November 25, 1976. Two days after, or on November 27, 1976, Union Shipping Corp. reiterated its motion for reconsideration and reinvestigation. On December 28, 1978, the Commissioner instituted a collection case. Union Shipping Corp. filed a petition for review with the Court of Tax Appeals, which ruled in its favor and set aside the assessment.

On appeal to this Court, the Commissioner assailed the timeliness of the petition for review, asserting that the 30-day period should have been reckoned from the issuance of the warrant on November 25, 1976, and not from the filing of the collection case on December 28, 1978. This Court rejected the Commissioner's stance, holding that the taxpayer was left in the dark as to which action of the Commissioner was appealable to the Court of Tax Appeals. This Court held that since the Commissioner of Internal Revenue had not clearly signified the final action on the disputed assessment, legally, the period to appeal had not commenced to run. Thus, it was only when the taxpayer received the summons on the civil suit for collection of deficiency income on December 28, 1978 that the period to appeal began.[94]

In *Commissioner of Internal Revenue v. Algue*,[95] this Court ruled that the Warrant could not be considered a denial of the taxpayer's protest, which

---

92 Id. at 383.
93 264 Phil. 132 (1990) [Per J. Paras, Second Division].
94 Id.
95 241 Phil. 829 (1988) [Per J. Cruz, First Division].

was filed four days after the notice of assessment. This Court noted that since the protest could not be located in the office of the Commissioner, it apparently was not taken into consideration when the Commissioner issued the warrant.

Also, in *Advertising Associates, Inc. v. Court of Appeals,*[96] the Commissioner's letter directing the taxpayer to appeal to the Court of Tax Appeals, and not the Warrant earlier served upon the taxpayer, was held to be the reviewable decision of the Commissioner. This Court noted that the letter, which denied the taxpayer's requests for cancellation of the assessments and withdrawal of the warrants, demanded for payment of the deficiency taxes within 10 days from notice and closed with this paragraph: "*This constitutes our final decision on the matter. If you are not agreeable, you may appeal to the Court of Tax Appeals within 30 days from receipt of this letter.*"[97] This Court explained that the directive was in consonance with the dictum that the Commissioner should clearly indicate to the taxpayer what constitutes its final decision on disputed assessment. That procedure, said this Court, "is demanded by the pressing need for fair play, regularity and orderliness in administrative action[.]"[98]

Union Shipping, Algue, and *Advertising Associates* are not on point here. In *Union Shipping*, the taxpayer *timely* (a mere two days) filed a motion reiterating its request for reconsideration upon receipt of the warrant of distraint and levy. In *Algue*, the protest filed by the taxpayer could not be found in the Commissioner's office. Lastly, in *Advertising Associates*, the Commissioner issued a letter denying the request for cancellation of the warrant and categorically stating that it is the "final decision,"[99] and the taxpayer may appeal to the Court of Tax Appeals within 30 days.

In this case, respondent's request[100] for withdrawal and cancellation of the Warrant of Distraint and Levy was filed on September 29, 2010, or only after **99 days** from receipt of the Warrant. Petitioner does not deny receipt of respondent's reply letter (containing its protest) to the preliminary collection letter.[101] Finally, there was no such categorical statement in the letter-response dated February 3, 2011 of the Bureau of Internal Revenue Regional Director Romulo L. Aguila, Jr.[102]

Parenthetically, the 30-day period to appeal had long lapsed when respondent filed its petition for review **on March 31, 2011**. Respondent's belated request for cancellation and withdrawal of the Warrant did not serve

---

96 218 Phil. 730 (1984) [Per J. Aquino, Second Division].
97 Id. at 735.
98 Id. at 736.
99 Id. at 735.
100 *Rollo*, pp. 113–119.
101 Id. at 109.
102 Id. at 120–125.

to extend the thirty 30-day period to appeal.[103] "A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, is a mere statutory right that may be waived or lost, as in this case."[104] Considering that the petition for review was filed way beyond the 30-day prescriptive period, the Court of Tax Appeals should have dismissed the appeal on the ground of lack of jurisdiction.

II

The issue on the receipt or non-receipt of the Final Demand Letter and Assessment Notice is a factual question that is not generally proper in a Rule 45 petition before this Court. However, jurisprudence has recognized exceptions to this rule as when the lower court's findings are not supported by substantial evidence[105] or when the judgment is premised on a misapprehension of facts,[106] as in this case.

Rule 131, Section 3(v) of the Rules of Court provides that "a letter duly directed and mailed" is presumed to have been received by the addressee thereof "in the regular course of the mail[.]" In *Nava v. Commissioner of Internal Revenue*:[107]

> 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 mails. But if one of the said facts fails to appear, the presumption does not lie.[108]

However, this presumption is disputable and may be contradicted and overcome by evidence.[109]

In *Barcelon Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[110] this Court stated that "independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of

---

[103] In *Commissioner of Internal Revenue v. Concepcion,* 131 Phil. 168, 172 (1968) [Per J. Fernando, En Banc]:
"Once the matter has reached the stage of finality in view of the failure to appeal, it logically follows, in the appropriate language of Justice Makalintal, in *Morales v. Collector of Internal Revenue*, that it 'could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy.'"

[104] *Dayrit v. Cruz,* 248 Phil. 12, 22–23 (1988) [Per J. Gancayco, First Division].

[105] *Benguet Corporation v. Commissioner of Internal Revenue,* 525 Phil. 226 (2006) [Per J. Corona, Second Division].

[106] *Commissioner of Internal Revenue v. Mitsubishi Metal Corp.,* 260 Phil. 224 (1990) [Per J. Regalado, Second Division].

[107] 121 Phil. 117 (1965) [Per J.B.L. Reyes, En Banc].

[108] Id. at 122–123. *Citing Enriquez v. Sun Life Assurance of Canada,* 41 Phil. 269 (1920) [Per J. Malcom, En Banc].

[109] RULES OF COURT, Rule 131, sec. 3(v).

[110] 529 Phil. 785 (2006) [Per J. Chico-Nazario, First Division].

Posts,"[111] should have been presented to prove that the Formal Assessment Notice was released, mailed, and sent to the taxpayer.

Here, the requirements of Rule 131, Section 3(v) of the Rules of Court were adequately shown by petitioner. BIR Administrative Aide VI Ronnie SJ Ocampo testified that: (a) he was the one who actually placed the Formal Letter of Demand and Final Assessment Notice No. 021-R-0604112007 dated April 2, 2008 into the sealed envelope and actually delivered the said mail matter to the Post Office of San Fernando, Pampanga.[112] The Final Assessment Notice was sent through registered mail under Registry Receipt No. 853, addressed to respondent at 3F SM City San Fernando Pampanga, on April 10, 2008; and (b) that Registry Receipt No. 853 was received by Brian David on April 14, 2008, as shown in the Registry Return Card.[113] Hence, there was a valid and effective issuance or release of the Formal Letter of Demand and Final Assessment Notice on April 10, 2008, through registered mail.

The service by registered mail of the Final Assessment Notice to the respondent was authorized under Section 3.1.4 of Revenue Regulations No. 12-99. The mail was not returned to the sender so petitioner had no reason to suspect that the mail was not received in due course. Section 3.1.7 states that: "*if the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer.*"

Accordingly, petitioner sent a Preliminary Collection Letter[114] dated June 10, 2008 demanding payment of respondent's internal revenue tax liabilities. Respondent filed a protest on the preliminary collection letter, asserting its payment of the withholding tax deficiency and exemption from income tax and value-added tax liabilities.

On June 22, 2010, petitioner issued a Warrant of Distraint and/or Levy;[115] which respondent sought to be cancelled and withdrawn in its letter dated September 24, 2010. There, respondent denied, for the first time, having received the final assessment notice.

In *Sebastian v. Workmen's Compensation Commission*,[116] this Court held that "when a letter duly directed and mailed to a known addressee has not been returned to the sender, it is presumed that the addressee received

---

111 Id. at 798.
112 *Rollo*, p. 20.
113 Id. at 185–187, Judicial Affidavit.
114 Id. at 109.
115 Id. at 112.
116 171 Phil. 603 (1978) [Per J. Makasiar, First Division].

the letter[.]"[117] It is incumbent upon the addressee *to show by indubitable evidence* that indeed it did not receive the letter.

Here, petitioner presented the registry receipts and return card along with the testimony of the Bureau of Internal Revenue personnel who prepared the mail matter and personally delivered it to the Post Office of San Fernando Pampanga. In addition, petitioner also presented Postman II Emelito M. Victoria who delivered the mail. He testified that all mail matters addressed to tenants of SM City Pampanga are received through SM Warehouse by Warehouse Assistant Brian David, who receives such mail matters for the tenants. For this, the Postman issued a Certification dated February 7, 2012 stating that he delivered Registered Mail No. 853, addressed to respondent and posted on April 10, 2008, and was received by Brian David on April 14, 2008 in SM City Pampanga. Warehouse Assistant Brian David, in turn, testified that as part of his functions, he receives mail matters and other documents for distribution to tenants of SM City Pampanga, and confirmed his receipt of the mail matter on April 14, 2008 and his handwriting on the Registry Return Card. He also confirmed that respondent is one of the tenants of SM City Pampanga.[118]

It was then incumbent upon respondent to overcome the presumption that the Final Assessment Notice, which petitioner sent by registered mail, was received in the regular course of mail. Bare denial of receipt of the Final Assessment Notice will not suffice. As held in *Allied Banking Corp. v. De Guzman, Sr.*:

> Unfortunately for PNB, moreover, it failed to overcome said presumption. ***The Court had consistently ruled that when a document is shown to have been properly addressed and actually mailed, there arises a presumption that the same was duly received by the addressee, and it becomes the burden of the latter to prove otherwise. Here, PNB's bare, self-serving denial, and nothing more, does little to persuade.*** To the Court, PNB's mere denial cannot prevail over the records presented by De Guzman such as the letter of revocation, registry receipt, and certification, which constitute documentary evidence enjoying the presumption that, absent clear and convincing evidence to the contrary, these were duly received in the regular course of mail. Thus, in view of PNB's failure to discharge its burden to overcome the presumption by sufficient evidence, the courts below correctly found that De Guzman had, indeed, already revoked the first surety agreement. Consequently, PNB cannot hold De Guzman liable for the obligations of the company thereunder, nor any other obligation thereafter.[119] (Emphasis supplied, citation omitted)

---

[117] Id. at 606–607.

[118] *Rollo*, pp. 20–21; and 195–196, Judicial Affidavit.

[119] *Allied Banking Corp. v. De Guzman, Sr.*, 835 Phil. 985, 996 (2018) [Per J. Peralta, En Banc], citing *Palecpec, Jr. v. Davis*, 555 Phil. 675, 694–695 (2007) [Per Curiam, En Banc]; and *Lapulapu Foundation Inc. v. Court of Appeals*, 466 Phil. 53, 60 (2004) [Per J. Callejo, Sr., Second Division].

In *Mindanao Terminal and Brokerage Service, Inc. v. Court of Appeals*,[120] this Court upheld the service by registered mail of a judgment upon a front desk receptionist at the condominium where the counsel of a party was holding his office. This Court held that as between the denial by a party of its receipt of notices of registered mail, and the assertion of an official whose duty is to send notices—which assertion is fortified by the presumption that the official duty has been regularly performed—the latter prevails:

> As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose duty is to send notices, which assertion is fortified by the presumption that the official duty has been regularly performed, the choice is not difficult to make. As shown in the records, the postmaster included in his certification the manner, date and the recipient of the delivery, a criterion for the proper service of judgment which this Court enunciated in *Santos v. Court of Appeals, viz.*:
>
> > Clearly then, proof should always be available to the post office not only of whether or not the notices of registered mail have been reported delivered by the letter carrier but also of how or to whom and when such delivery has been made. Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made.
> >
> > An examination of the postmaster's certification shows that:
> >
> > . . . registered letter No. 6270-B was received by Virgie Cabrera on 4 December 2002.
>
> This certification, the form of which came from the Supreme Court, and which only needs to be filled-up by the postmaster, to the mind of this Court, satisfies the requirement stated in *Santos.*[121] (Citations omitted)

At any rate, records show that respondent received the Preliminary Collection Letter dated June 10, 2008 demanding payment of its internal revenue tax liabilities. The Preliminary Collection Letter referred to the Final Assessment Notice as petitioner's basis in collecting from respondent the internal revenue tax liabilities of ₱4,067,264.18:

PRELIMINARY COLLECTION LETTER

June 10, 2008

SOUTH ENTERTAINMENT GALLERY, INC.

---

[120] 693 Phil. 25 (2012) [Per J. Perez, Second Division].

[121] Id. at 39–40.

3/F SM City Pampanga, San Jose,
City of San Fernando, Pampanga

Sir:

Our records show that we sent you an Assessment Notice for collection of your internal revenue tax liability/ies described hereunder which remains unpaid to date:

Kind of Tax	Tax Due	Surcharge	Interest	Compromise	Total Amount Due
Income Tax	247,216.00		79,521.15	4,000.00	330,737.15
VAT	2,046,399.96	511,735.00	1,119,521.40	20,000.00	3,697,656.36
Withholding	25,077.32		13,793.35		38,870.67
Total	**2,318,693.28**	**511,735.00**	**1,212,835.90**	**24,000.00**	**4,067,264.18**

Ass./Demand No.:021R-0604112007 **Year Involved: 2005**
Date Issued April 2, 2008[122] (Emphasis supplied)

The Preliminary Collection Letter also gave respondent 10 days from receipt of the letter to pay the assessment, otherwise, petitioner "shall be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice."[123]

In its reply[124] to the Preliminary Collection Letter, respondent did not refute receipt of the Final Assessment Notice. This brings to mind the Revised Rules on Evidence's provision on admission by silence:

> An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.[125]

This Court has recognized the application of the rule "to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant."[126] In this case, respondent was communicating in writing with the petitioner regarding the assessment and collection of taxes. It had an interest to object promptly, to the existence and/or its receipt of the final assessment notice (Ass./Demand No.:021R-0604112007 dated April 2,

---

122 *Rollo*, p. 109.
123 Id.
124 Id. at 110.
125 Section 32, Rule 130.
126 *Villanueva v. Balaguer*, 608 Phil. 463 (2009) [Per J. Ynares-Santiago, Third Division], cited in *Spouses Pamplona v. Spouses Cueto*, 826 Phil. 302, 318 (2018) [Per J. Bersamin, Third Division].

2008), as it would naturally have done if the statement was not true. Respondent's silence then may reasonably be construed as an admission that it received the Final Assessment Notice referred to in the Preliminary Collection Letter.

Respondent raised the issue of non-receipt only after two years, that is, after it had received the Warrant of Distraint and Levy. By the principle of estoppel, respondent is barred from denying the existence and its receipt of the Final Assessment Notice. In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*:[127]

> Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.[128] (Citation omitted)

To this Court, respondent's bare and belated denial did not overcome the testimonial and documentary evidence petitioner presented, which showed that the Final Assessment Notice was released, mailed, and sent.

WHEREFORE, the Petition is **GRANTED.** The January 4, 2016 Decision and July 22, 2016 Resolution of the Court of Tax Appeals En Banc are **REVERSED and SET ASIDE.** Respondent's Petition for Review is **DISMISSED** for being time-barred.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

---

127 672 Phil. 514 (2011) [Per J. Mendoza, Third Division].
128 Id. at 527.

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.

DIOSDADO M. PERALTA
Chief Justice