587 Phil. 234

THIRD DIVISION

[G.R. No. 167560, September 17, 2008]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. DOMINADOR MENGUITO, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the March 31, 2005 Decision[1] of the Court of Appeals (CA) which reversed and set aside the Court of Tax Appeals (CTA) April 2, 2002 Decision[2] and October 10, 2002 Resolution[3] ordering Dominador Menguito (respondent) to pay the Commissioner of Internal Revenue (petitioner) deficiency income and percentage taxes and delinquency interest.

Based on the Joint Stipulation of Facts and Admissions[4] of the parties, the CTA summarized the factual and procedural antecedents of the case, the relevant portions of which read:

> Petitioner Dominador Menguito [herein respondent] is a Filipino citizen, of legal age, married to Jeanne Menguito and is engaged in the restaurant and/or cafeteria business. For the years 1991, 1992 and 1993, its principal place of business was at Gloriamaris, CCP Complex, Pasay City and later transferred to Kalayaan Bar (Copper Kettle Cafeteria Specialist or CKCS), Departure Area, Ninoy Aquino International Airport, Pasay City. During the same years, he also operated a branch at Club John Hay, Baguio City carrying the business name of Copper Kettle Cafeteria Specialist (Joint Stipulation of Facts and Admissions, p. 133, CTA records).
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> ***Subsequently, BIR Baguio received information that Petitioner [herein respondent] has undeclared income from Texas Instruments and Club John***

Hay, prompting the BIR to conduct another investigation. Through a letter dated July 28, 1997, Spouses Dominador Menguito and Jeanne Menguito (Spouses Menguito) were informed by the Assessment Division of the said office that they have underdeclared sales totaling P48,721,555.96 (Exhibit 11, p. 83, BIR records). This was followed by a Preliminary Ten (10) Day Letter dated August 11, 1997, informing Petitioner [herein respondent] that in the investigation of his 1991, 1992 and 1993 income, business and withholding tax case, it was found out that there is still due from him the total sum of P34,193,041.55 as deficiency income and percentage tax.

On September 2, 1997, the assessment notices subject of the instant petition were issued. These were protested by Ms. Jeanne Menguito, through a letter dated September 28, 1997 (Exhibit 14, p. 112, BIR Records), on the ground that the 40% deduction allowed on their computed gross revenue, is unrealistic. Ms. Jeanne Menguito requested for a period of thirty (30) days within which to coordinate with the BIR regarding the contested assessment.

On October 10, 1997, BIR Baguio replied, informing the Spouses Menguito that the source of assessment was not through the disallowance of claimed expenses but on data received from Club John Hay and Texas Instruments Phils., Inc. Said letter gave the spouses ten (10) days to present evidence (Exhibit 15, p. 110, BIR Records).

In an effort to clear an alleged confusion regarding Copper Kettle Cafeteria Specialist (CKCS) being a sole proprietorship owned by the Spouses, and Copper Kettle Catering Services, Inc. (CKCS, Inc.) being a corporation with whom Texas Instruments and Club John Hay entered into a contract, Petitioner [respondent] submitted to BIR Baguio a photocopy of the SEC Registration of Copper Kettle Catering Services, Inc. on March 23, 1999 (pp. 134-141, BIR Records).

On April 12, 1999, BIR Baguio wrote a letter to Spouses Menguito, informing the latter that a reinvestigation or reconsideration cannot be given due course by the mere submission of an uncertified photocopy of the Certificate of Incorporation. Thus, it avers that the amendment issued is still valid and enforceable.

On May 26, 1999, Petitioner [respondent] filed the present case, praying for the cancellation and withdrawal of the deficiency income tax and percentage tax assessments on account of prescription, whimsical factual findings, violation of procedural due process on the issuance of assessment notices, erroneous address of notices and multiple credit/ investigation by the Respondent [petitioner] of

Petitioner's [respondent's] books of accounts and other related records for the same tax year.

Instead of filing an Answer, Respondent [herein petitioner] moved to dismiss the instant petition on July 1, 1999, on the ground of lack of jurisdiction. According to Respondent [petitioner], the assessment had long become final and executory when Petitioner [respondent] failed to comply with the letter dated October 10, 1997.

Petitioner opposed said motion on July 21, 1999, claiming that the final decision on Petitioner's [respondent's] protest is the April 12, 1999 letter of the Baguio Regional Office; therefore, the filing of the action within thirty (30) days from receipt of the said letter was seasonably filed. Moreover, Petitioner [respondent] asserted that granting that the April 12, 1999 letter in question could not be construed to mean as a denial or final decision of the protest, still Petitioner's [respondent's] appeal was timely filed since Respondent [petitioner] issued a Warrant of Distraint and/or Levy against the Petitioner [respondent] on May 3, 1999, which warrant constituted a final decision of the Respondent [petitioner] on the protest of the taxpayer.

> On September 3, 1999, this Court denied Respondent's [petitioner's] 'Motion to Dismiss' for lack of merit.
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> Respondent [petitioner] filed his Answer on September 24, 1999, raising the following Special and Affirmative Defenses:
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> x x x x
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> 5. Investigation disclosed that for taxable years 1991, 1992 and 1993, petitioner [respondent] filed false or fraudulent income and percentage tax returns with intent to evade tax by under declaring his sales.
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> 6. The alleged duplication of investigation of petitioner [respondent] by the BIR Regional Office in Baguio City and by the Revenue District Office in Pasay City is justified by the finding of fraud on the part of the petitioner [respondent], which is an exception to the provision in the Tax Code that the examination and inspection of books and records shall be made only once in a taxable year (Section 235, Tax Code). At any rate, petitioner [respondent], in a letter dated July 18, 1994, waived his right to the consolidation of said investigation.

7. ***The aforementioned falsity or fraud was discovered on August 5, 1997. The assessments were issued on September 2, 1997, or within ten (10) years from the discovery of such falsity or fraud (Section 223, Tax Code). Hence, the assessments have not prescribed.***

8. ***Petitioner's [respondent's] allegation that the assessments were not properly addressed is rendered moot and academic by his acknowledgment in his protest letter dated September 28, 1997 that he received the assessments.***

9. ***Respondent [petitioner] complied with the provisions of Revenue Regulations No. 12-85 by informing petitioner [respondent] of the findings of the investigation in letters dated July 28, 1997 and August 11, 1997 prior to the issuance of the assessments.***

10. ***Petitioner [respondent] did not allege in his administrative protest that there was a duplication of investigation, that the assessments have prescribed, that they were not properly addressed, or that the provisions of Revenue Regulations No. 12-85 were not observed. Not having raised them in the administrative level, petitioner [respondent] cannot raise the same for the first time on appeal (Aguinaldo Industries Corp. vs. Commissioner of Internal Revenue, 112 SCRA 136).***

11. The assessments were issued in accordance with law and regulations.

12. All presumptions are in favor of the correctness of tax assessments (CIR vs. Construction Resources of Asia, Inc., 145 SCRA 67), and the burden to prove otherwise is upon petitioner [respondent].[5] (Emphasis supplied)

On April 2, 2002, the CTA rendered a Decision, the dispositive portion of which reads:

> Accordingly, Petitioner [herein respondent] is **ORDERED** to **PAY** the Respondent [herein petitioner] the amount of P11,333,233.94 and P2,573,655.82 as deficiency income and percentage tax liabilities, respectively for taxable years 1991, 1992 and 1993 plus 20% delinquency interest from October 2, 1997 until full payment thereof.

SO ORDERED.[6]

Respondent filed a motion for reconsideration but the CTA denied the same in its Resolution of October 10, 2002.[7]

Through a Petition for Review[8] filed with the CA, respondent questioned the CTA Decision and Resolution mainly on the ground that Copper Kettle Catering Services, Inc. (CKCS, Inc.) was a separate and distinct entity from Copper Kettle Cafeteria Specialist (CKCS); the sales and revenues of CKCS, Inc. could not be ascribed to CKCS; neither may the taxes due from one, charged to the other; nor the notices to be served on the former, coursed through the latter.[9] Respondent cited the Joint Stipulation in which petitioner acknowledged that its (respondent's) business was called Copper Kettle Cafeteria Specialist, not Copper Kettle Catering Services, Inc.[10]

Based on the unrefuted[11] CTA summary, the CA rendered the Decision assailed herein, the dispositive portion of which reads:

> WHEREFORE, the instant petition is GRANTED. Reversing the assailed Decision dated April 2, 2002 and Resolution dated October 10, 2002, the deficiency income tax and percentage income tax assessments against petitioner in the amounts of P11,333,233.94 and P2,573,655.82 for taxable years 1991, 1992 and 1993 plus the 20% delinquency interest thereon are annulled.
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> SO ORDERED.[12]

Petitioner filed a motion for reconsideration but the CA denied the same in its October 10, 2002 Resolution.[13]

Hence, herein recourse to the Court for the reversal of the CA decision and resolution on the following grounds:

I

> The Court of Appeals erred in reversing the decision of the Court of Tax Appeals and in holding that Copper Kettle Cafeteria Specialist owned by respondent and Copper Kettle Catering Services, Inc. owned and managed by respondent's wife are not one and the same.

II

> The Court of Appeals erred in holding that respondent was denied due process for failure of petitioner to validly serve respondent with the post-reporting and pre-assessment notices as required by law.

On the first issue, the CTA has ruled that CKCS, Inc. and CKCS are one and the same corporation because "[t]he contract between Texas Instruments and Copper Kettle was signed by petitioner's [respondent's] wife, Jeanne Menguito as proprietress."[14]

However, the CA reversed the CTA on these grounds:

> Respondent's [herein petitioner's] allegation that Copper Kettle Catering Services, Inc. and Copper Kettle Cafeteria Specialists are not distinct entities and that the under-declared sales/revenues of Copper Kettle Catering Services, Inc. pertain to Copper Kettle Cafeteria Specialist are belied by the evidence on record. In the Joint Stipulation of Facts submitted before the tax court, respondent [petitioner] admitted "that petitioner's [herein respondent's] business name is Copper Kettle Cafeteria Specialist."
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> Also, the Certification of Club John Hay and Letter dated July 9, 1997 of Texas Instruments both addressed to respondent indicate that these companies transacted with Copper Kettle Catering Services, Inc., owned and managed by JEANNE G. MENGUITO, NOT petitioner Dominador Menguito. The alleged under-declared sales income subject of the present assessments were shown to have been earned by Copper Kettle Catering Services, Inc. in its commercial transaction with Texas Instruments and Camp John Hay; NOT by petitioner's dealing with these companies. In fact, there is nothing on record which shows that Texas Instruments and Camp John Hay conducted business relations with Copper Kettle Cafeteria Specialist, owned by herein petitioner Dominador Menguito. In the absence, therefore, of clear and convincing evidence showing that Copper Kettle Cafeteria Specialist and Copper Kettle Catering Services, Inc. are one and the same, respondent can NOT validly impute alleged underdeclared sales income earned by Copper Kettle Catering Services, Inc. as sales income of Copper Kettle Cafeteria Specialist.[15] (Emphasis supplied)

Respondent is adamant that the CA is correct. Many times in the past, the BIR had treated CKCS separately from CKCS, Inc.: from May 1994 to June 1995, the BIR sent audit teams to examine the books of account and other accounting records of CKCS, and based on said audits, respondent was held liable for deficiency taxes, all of which he had paid.[16] Moreover, the certifications[17] issued by Club John Hay and Texas Instruments identify the concessionaire operating therein as CKCS, Inc., owned and managed by his spouse Jeanne Menguito, and not CKCS.[18]

Petitioner impugns the findings of the CA, claiming that these are contradicted by evidence on record consisting of a reply to the September 2, 1997 assessment notice of BIR Baguio which Jeanne Menguito wrote on September 28, 1997, to wit:

> ***We*** are in receipt of the assessment notice you have sent us, dated September 2, 1997. Having taken hold of the same only now following ***our travel overseas, we were not able to respond immediately and manifest our protest***. Also, with the impending termination of ***our businesses at 19th Tee, Club John Hay and at Texas Instruments, Loakan, Baguio City***, we have already started the transfer of our records and books in Baguio City to Manila that we will need more time to review and sort the records that may have to be presented relative to the assessment x x x.[19] (Emphasis supplied)

Petitioner insists that said reply confirms that the assessment notice is directed against the businesses which she and her husband, respondent herein, own and operate at Club John Hay and Texas Instruments, and establishes that she is protesting said notice not just for herself but also for respondent.[20]

Moreover, petitioner argues that if it were true that CKCS, Inc. and CKCS are separate and distinct entities, respondent could have easily produced the articles of incorporation of CKCS, Inc.; instead, what respondent presented was merely a photocopy of the incorporation articles.[21] Worse, petitioner adds, said document was not offered in evidence before the CTA, but was presented only before the CA.[22]

Petitioner further insists that CKCS, Inc. and CKCS are merely employing the fiction of their separate corporate existence to evade payment of proper taxes; that the CTA saw through their ploy and rightly disregarded their corporate individuality, treating them instead as one taxable entity with the same tax base and liability;[23] and that the CA should have sustained the CTA.[24]

In effect, petitioner would have the Court resolve a purely factual issue[25] of whether or not there is substantial evidence that CKCS, Inc. and CKCS are one and the same taxable entity.

As a general rule, the Court does not venture into a trial of facts in proceedings under Rule 45 of the Rules of Courts, for its only function is to review errors of law.[26] The Court declines to inquire into errors in the factual assessment of the CA, for the latter's findings are conclusive, especially when these are synonymous to those of the CTA.[27] But when the CA contradicts the factual findings of the CTA, the Court deems it necessary to

determine whether the CA was justified in doing so, for one basic rule in taxation is that the factual findings of the CTA, when supported by substantial evidence, will not be disturbed on appeal unless it is shown that the CTA committed gross error in its appreciation of facts. [28]

The Court finds that the CA gravely erred when it ignored the substantial evidence on record and reversed the CTA.

In a number of cases, the Court has shredded the veil of corporate identity and ruled that where a corporation is merely an adjunct, business conduit or alter ego of another corporation or when they practice fraud on our internal revenue laws,[29] the fiction of their separate and distinct corporate identities shall be disregarded, and both entities treated as one taxable person, subject to assessment for the same taxable transaction.

The Court considers the presence of the following circumstances, to wit: when the owner of one directs and controls the operations of the other, and the payments effected or received by one are for the accounts due from or payable to the other;[30] or when the properties or products of one are all sold to the other, which in turn immediately sells them to the public,[31] as substantial evidence in support of the finding that the two are actually one juridical taxable personality.

In the present case, overwhelming evidence supports the CTA in disregarding the separate identity of CKCS, Inc. from CKCS and in treating them as one taxable entity.

First, in respondent's Petition for Review before the CTA, he expressly admitted that he "is engaged in restaurant and/or cafeteria business" and that "[***i]n 1991, 1992 and 1993, he also operated a branch at Club John Hay, Baguio Citywith a business name of Copper Kettle Cafeteria Specialist***."[32] Respondent repeated such admission in the Joint Stipulation.[33] And then in Exhibit "1"[34] for petitioner, a July 18, 1994 letter sent by Jeanne Menguito to BIR, Baguio City, she stated thus:

> "in connection with the investigation of ***Copper Kettle Cafeteria Specialist*** which is located at 19th Tee Club John Hay, Baguio City under letter of authority nos. 0392897, 0392898, and 0392690 dated May 16, 1994, investigating **my** income, business, and withholding taxes for the years 1991, 1992, and 1993."[35] (Emphasis supplied)

Jeanne Menguito signed the letter as proprietor of Copper Kettle Cafeteria Specialist.[36]

Related to Exhibit "1" is petitioner's Exhibit "14," which is another letter dated September

28, 1997, in which Jeanne Menguito protested the September 2, 1997 assessment notices directed at Copper Kettle Cafeteria Specialist and referred to the latter as "our business at 19th Tee Club John Hay and at Texas Instruments."[37] Taken along with the Joint Stipulation, Exhibits "A" through "C" and the August 3, 1993 Certification of Camp John Hay, Exhibits "1" and "14," confirm that respondent, together with his spouse Jeanne Menguito, own, operate and manage a branch of Copper Kettle Cafeteria Specialist, also called Copper Kettle Catering Services at Camp John Hay.

Moreover, in Exhibits "A" to "A-1,"[38] Exhibits "B" to "B-1"[39] and Exhibits "C" to "C-1"[40] which are lists of concessionaires that operated in Club John Hay in 1992, 1993 and 1991, respectively,[41] it appears that there is no outlet with the name "Copper Kettle Cafeteria Specialist" as claimed by respondent. The name that appears in the lists is "19th TEE CAFETERIA (Copper Kettle, Inc.)." However, in the light of the express admission of respondent that in 1991, 1992 and 1993, he operated a branch called Copper Kettle Cafeteria Specialist in Club John Hay, the entries in Exhibits "A" through "C" could only mean that said branch refers to "19th Tee Cafeteria (Copper Kettle, Inc.)." There is no evidence presented by respondent that contradicts this conclusion.

In addition, the August 9, 1993 Certification issued by Club John Hay that "COPPER KETTLE CATERING SERVICES owned and managed by MS. JEANNE G. MENGUITO is a concessionaire in John Hay since July 1991 up to the present and is operating the outlet 19TH TEE CAFETERIA AND THE TEE BAR"[42] convincingly establishes that respondent's branch which he refers to as Copper Kettle Cafeteria Specialist at Club John Hay also appears in the latter's records as "Copper Kettle Catering Services" with an outlet called "19th Tee Cafeteria and The Tee Bar."

Second, in Exhibit "8"[43] and Exhibit "E,"[44] Texas Instruments identified the concessionaire operating its canteen as "Copper Kettle Catering Services, Inc."[45] and/or "COPPER KETTLE CAFETERIA SPECIALIST SVCS."[46] It being settled that respondent's "Copper Kettle Cafeteria Specialist" is also known as "Copper Kettle Catering Services," and that respondent and Jeanne Menguito both own, manage and act as proprietors of the business, Exhibit "8" and Exhibit "E" further establish that, through said business, respondent also had taxable transactions with Texas Instruments.

In view of the foregoing facts and circumstances, the Articles of Incorporation of CKCS, Inc. -- a certified true copy of which respondent attached only to his Reply filed with the CA[47] -- cannot insulate it from scrutiny of its real identity in relation to CKCS. It is noted that said Articles of Incorporation of CKCS, Inc. was issued in 1989, but documentary evidence indicate that after said date, CKCS, Inc. has also assumed the name CKCS, and

vice-versa. The most concrete indication of this practice is the 1991 Quarterly Percentage Tax Returns covering the business name/trade "19th Tee Camp John Hay." In said returns, the taxpayer is identified as "Copper Kettle Cafeteria Specialist"[48] or CKCS, not CKCS, Inc. Yet, in several documents already cited, the purported owner of 19th Tee Bar at Club John Hay is CKCS, Inc.

All these pieces of evidence buttress the finding of the CTA that in 1991, 1992 and 1993, respondent, together with his spouse Jeanne Menguito, owned and operated outlets in Club John Hay and Texas Instruments under the names Copper Kettle Cafeteria Specialist or CKCS and Copper Kettle Catering Services or Copper Kettle Catering Services, Inc..

Turning now to the second issue.

In respondent's Petition for Review with the CTA, he questioned the validity of the Assessment Notices,[49] all dated September 2, 1997, issued by BIR, Baguio City against him on the following grounds:

1. The assessment notices, based on income and percentage tax returns filed for 1991, 1992 and 1993, were issued beyond the three-year prescriptive period under Section 203 of the Tax Code;[50]

2. The assessment notices were addressed to Copper Kettle Specialist, Club John Hay, Baguio City, despite notice to petitioner that respondent's principal place of business was at the CCP Complex, Pasay City.[51]

3. The assessment notices were issued in violation of the requirement of Revenue Regulations No. 12-85, dated November 27, 1985, that the taxpayer be issued a post-reporting notice and pre-assessment notice before the preliminary findings of deficiency may ripen into a formal assessment;[52] and

4. The assessment notices did not give respondent a 15-day period to reply to the findings of deficiency.[53]

The Court notes that nowhere in his Petition for Review did respondent deny that he received the September 2, 1997 assessment notices. Instead, during the trial, respondent's witness, Ma. Theresa Nalda (Nalda), testified that she informed the BIR, Baguio City "that there was no Notice or letter, that we did not receive, perhaps, because they were not addressed to Mr. Menguito's head office."[54]

The CTA correctly upheld the validity of the assessment notices. Citing Section 223 of the

Tax Code which provides that the prescriptive period for the issuance of assessment notices based on fraud is 10 years, the CTA ruled that the assessment notices issued against respondent on September 2, 1997 were timely because petitioner discovered the falsity in respondent's tax returns for 1991, 1992 and 1993 only on February 19, 1997.[55] Moreover, in accordance with Section 2 of Revenue Regulation No. 12-85, which requires that assessment notices be sent to the address indicated in the taxpayer's return, unless the latter gives a notice of change of address, the assessment notices in the present case were sent by petitioner to Camp John Hay, for this was the address respondent indicated in his tax returns.[56] As to whether said assessment notices were actually received, the CTA correctly held that since respondent did not testify that he did not receive said notices, it can be presumed that the same were actually sent to and received by the latter. The Court agrees with the CTA in considering as hearsay the testimony of Nalda that respondent did not receive the notices, because Nalda was not competent to testify on the matter, as she was employed by respondent only in June 1998, whereas the assessment notices were sent on September 2, 1997.[57]

Anent compliance with the requirements of Revenue Regulation No. 12-85, the CTA held:

> BIR records show that on July 28, 1997, a letter was issued by BIR Baguio to Spouses Menguito, informing the latter of their supposed underdeclaration of sales totaling P48,721,555.96 and giving them 5 days to communicate any objection to the results of the investigation (Exhibit 11, p. 83, BIR Records). Records likewise reveal the issuance of a Preliminary Ten (10) Day Letter on August 11, 1997, informing Petitioner [respondent herein] that the sum of P34,193,041.55 is due from him as deficiency income and percentage tax (Exhibit 13, p. 173, BIR Records). Said letter gave the Petitioner [respondent herein] a period of ten (10) days to submit his objection to the proposed assessment, either personally or in writing, together with any evidence he may want to present.
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> As to Petitioner's allegation that he was given only ten (10) days to reply to the findings of deficiency instead of fifteen (15) days granted to a taxpayer under Revenue Regulations No. 12-85, this Court believes that when Respondent [petitioner herein] gave the Petitioner [respondent herein] on October 10, 1997 an additional period of ten (10) days to present documentary evidence or a total of twenty (20) days, there was compliance with Revenue Regulations No. 12-85 and the latter was amply given opportunity to present his side x x x.[58]

The CTA further held that respondent was estopped from raising procedural issues against

the assessment notices, because these were not cited in the September 28, 1997 letter-protest which his spouse Jeanne Menguito filed with petitioner.[59]

On appeal by respondent,[60] the CA resolved the issue, thus:

> ***Moreover, 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.*** Here, respondent [petitioner herein] merely alleged that it "forwarded" the assessment notices to petitioner [respondent herein]. The respondent did not show any proof of mailing, registry receipt or acknowledgment receipt signed by the petitioner [respondent herein]. ***Since respondent [petitioner herein] has not adduced sufficient evidence that petitioner [respondent herein] had in fact received the pre-assessment notice and post-reporting notice required by law, it cannot be assumed that petitioner [respondent herein] had been served said notices***.[61]

No other ground was cited by the CA for the reversal of the finding of the CTA on the issue.

The CA is gravely mistaken.

In their Petition for Review with the CTA, respondent expressly stated that "[s]ometime in September 1997, petitioner [respondent herein] ***received*** various assessment notices, all dated 02 September 1997, issued by BIR-Baguio for alleged deficiency income and percentage taxes for taxable years ending 31 December 1991, 1992 and 1993 x x x."[62] In their September 28, 1997 protest to the September 2, 1997 assessment notices, respondent, through his spouses Jeanne Menguito, acknowledged that "[they] are ***in receipt*** of the assessment notice you have sent us, dated September 2, 1997 x x x."[63]

Respondent is therefore estopped from denying actual receipt of the September 2, 1997 assessment notices, notwithstanding the denial of his witness Nalda.

As to the address indicated on the assessment notices, respondent cannot question the same for it is the said address which appears in its percentage tax returns.[64] While respondent claims that he had earlier notified petitioner of a change in his business address, no evidence of such written notice was presented. Under Section 11 of Revenue Regulation No. 12-85, respondent's failure to give written notice of change of address bound him to whatever communications were sent to the address appearing in the tax returns for the period involved in the investigation.[65]

Thus, what remain in question now are: whether petitioner issued and mailed a post-reporting notice and a pre-assessment notice; and whether respondent actually received them.

There is no doubt that petitioner failed to prove that it served on respondent a post-reporting notice and a pre-assessment notice. Exhibit "11"[66] of petitioner is a mere photocopy of a July 28, 1997 letter it sent to respondent, informing him of the initial outcome of the investigation into his sales, and the release of a preliminary assessment upon completion of the investigation, with notice for the latter to file any objection within five days from receipt of the letter. "Exhibit "13"[67] of petitioner is also a mere photocopy of an August 11, 1997 Preliminary Ten (10) Day Letter to respondent, informing him that he had been found to be liable for deficiency income and percentage tax and inviting him to submit a written objection to the proposed assessment within 10 days from receipt of notice. But nowhere on the face of said documents can be found evidence that these were sent to and received by respondent. Nor is there separate evidence, such as a registry receipt of the notices or a certification from the Bureau of Posts, that petitioner actually mailed said notices.

However, while the lack of a post-reporting notice and pre-assessment notice is a deviation from the requirements under Section 1[68] and Section 2[69] of Revenue Regulation No. 12-85, the same cannot detract from the fact that formal assessments were issued to and actually received by respondents in accordance with Section 228 of the National Internal Revenue Code which was in effect at the time of assessment.

It should be emphasized that the stringent requirement that an assessment notice be satisfactorily proven to have been issued and released or, if receipt thereof is denied, that said assessment notice have been served on the taxpayer,[70] applies only to formal assessments prescribed under Section 228 of the National Internal Revenue Code, but not to post-reporting notices or pre-assessment notices. The issuance of a valid formal assessment is a substantive prerequisite to tax collection,[71] for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.[72]

A post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice. The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an "informal" conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment

notice. In the case of respondent, a formal assessment notice was received by him as acknowledged in his Petition for Review and Joint Stipulation; and, on the basis thereof, he filed a protest with the BIR, Baguio City and eventually a petition with the CTA.

WHEREFORE, the petition is **GRANTED**. The March 31, 2005 Decision of the Court of Appeals is **REVERSED** and **SET ASIDE** and the April 2, 2002 Decision and October 10, 2002 Resolution of the Court of Tax Appeals are **REINSTATED**.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

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[1] Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino; *rollo*, p. 10.

[2] Id. at 82.

[3] Id. at 101.

[4] CA *rollo*, pp. 143-145.

[5] CTA Decision, *rollo*, pp. 82, 84-87.

[6] Id. at 100.

[7] CA *rollo*, p. 106.

[8] Id. at 107.

[9] Petition for Review with the CA, *rollo*, pp. 115-1127.

[10] Petition, CA *rollo*, pp. 48-50.

[11] See Petition, *rollo*, pp. 4-12; respondent did not appeal from the CA Decision.

[12] Id. at 80-81.

[13] Supra note 3.

[14] CTA Decision, *rollo*, p. 93.

[15] CA Decision, id. at 24-26.

[16] Memorandum for respondent, id. at 274-276.

[17] Exhibits "10" and "11", id. at 170-171.

[18] *Rollo*, pp. 270-272.

[19] Exhibit "14", BIR records, p. 112,

[20] Petition, *rollo*, pp. 49-50.

[21] Id. at 50-51.

[22] Id. at 51-52; Memorandum for petitioner, id. at 243-245.

[23] *Rollo*, pp. 245-246.

[24] Petition, id. at 57-58.

[25] *ASJ Corporation v. Sps. Evangelista*, G.R. No. 158086, February 14, 2008.

[26] *Twin Towers Condominium Corporation v. Court of Appeals, 446 Phil. 280 (2003).*

[27] *Commissioner of Internal Revenue v. Sekisui Jushi Philippines, Inc., G.R. No. 149671,* July 21, 2006, 496 SCRA 206.

[28] *Commissioner of Internal Revenue v. Manila Electric Co.*, G.R. No. 121666, October 10, 2007, 535 SCRA 399; *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007; 521 SCRA 373.

[29] *Commissioner of Internal Revenue v. Norton and Harrison Company*, No. L-17618, August 31, 1964, 11 SCRA 714.

[30] *Commissioner of Internal Revenue v. Norton and Harrison Company,* supra note 29.

[31] *Liddell & Co., Inc. v. Commissioner of Internal Revenue, 112 Phil. 524 (1961).* See also *Commissioner of Internal Revenue v. Toda*, G.R. No. 147188, September 14, 2004, 438 SCRA 290.

[32] CTA records, p. 1.

[33] CA *rollo*, p. 143.

[34] BIR records, p. 0180.

[35] Petitioner's Formal Officer of Evidence, CA *rollo*, p. 217.

[36] *Rollo*, p. 170.

[37] Petition, *rollo*, pp. 49-50.

[38] CA *rollo*, p. 212.

[39] Id. at 211.

[40] Id. at 210.

[41] Respondent's Formal Officer of Evidence, id. at 206.

[42] *Rollo*, p. 170.

[43] *Rollo*, p. 171.

[44] CA *rollo*, p. 209.

[45] Supra note 34.

[46] Supra note 35.

[47] CA *rollo*, pp. 358-367.

[48] BIR Records, pp. 0004-0007.

[49] Annexes "G", "H", "I", "J". "K" and "L", CTA records, pp. 13-18.

[50] Petition for Review, id. at 4.

[51] Id.

[52] Id. at 4-5.

[53] Id. at 5.

[54] TSN, January 5, 2000, pp. 9-10.

[55] CTA Decision, *rollo*, pp. 94-95.

[56] Id. at 89-90.

[57] Id. at 90.

[58] CTA Decision, *rollo*, pp. 88 and 91.

[59] CTA Resolution, id. at 104-105.

[60] Petition for Review, CA *rollo*, p. 47.

[61] CA Decision, *rollo*, p. 26.

[62] CA *rollo*, p. 44.

[63] Supra note 21.

[64] BIR records, pp. 0004-0007.

[65] See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 458 Phil. 332

(2003).

[66] BIR records pp. 0082-0083.

[67] Id. at 0173.

[68] Sec. 1. *Post-reporting notice*. - Upon receipt of the report of findings, the Division Chief, Revenue District Officer or Chief, Office Audit Section, as the case maybe, shall send to the taxpayer a notice of an informal conference before forwarding the report to higher authorities for approval. The notice which is Annex "A" hereof shall be accompanied with a summary of findings as basis for the informal conference.

In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice maybe dispensed with.

[69] Sec. 2. *Notice of proposed assessment*. - When the commissioner or his duly authorized representative finds that taxes should be assessed, he shall first notify the taxpayer of the findings in the attached prescribed form as Annex "B" hereof. The notice shall be made in writing and sent to the taxpayer at the address indicated in his return or at his last known address as stated in his notice of change of address.

In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice maybe dispensed with.

[70] *Diez Vda. de Gabriel v. Commissioner of Internal Revenue*, 465 Phil. 986 (2004).

[71] *Commissioner of Internal Revenue v. Reyes, G.R. No. 159694,* January 27, 2006, 480 SCRA 382.

[72] *Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, 498 SCRA 126. See also *Commissioner of Internal Revenue v. Pascor Realty & Devt. Corp., 368 Phil. 714 (1999).*