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THIRD DIVISION

[G.R. No. 198677. November 26, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **BASF COATING + INKS PHILS., INC.,** *respondent.*

SYLLABUS

1. **TAXATION; TAX ASSESSMENT; NATIONAL INTERNAL REVENUE ACT OF 1997 (TAX REFORM ACT OF 1997); STATUTE OF LIMITATIONS, APPLIED IN THE CASE AT BAR.—** [U]nder Section 223 of the Tax Reform Act of 1997, the running of the Statute of Limitations provided under the provisions of Sections 203 and 222 of the same Act shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected. x x x Section 11 of Revenue Regulation No. 12-85 states that, in case of change of address, the taxpayer is required to give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business. However, x x x the x x x provisions on the suspension of the three-year period to assess apply only if the BIR Commissioner is not aware of the whereabouts of the taxpayer. x x x Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed.

2. **ID.; ID.; A FORMAL ASSESSMENT NOTICE (FAN) WHICH WAS NOT RECEIVED, EITHER ACTUALLY OR CONSTRUCTIVELY, NEVER ATTAINED FINALITY.—** [P]etitioner's reliance on the provisions of Section 3.1.7 of BIR Revenue Regulation No. 12-99 as well as on the case of *Nava v. Commissioner of Internal Revenue* is misplaced, because in the said case, one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as

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provided under the said Revenue Regulation. In the instant case, the FAN was sent to the wrong address. Thus, the CTA is correct in holding that the FAN never attained finality because respondent never received it, either actually or constructively.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* assailing the Decision[1] of the Court of Tax Appeals (*CTA*) *En Banc,* dated June 16, 2011, and Resolution[2] dated September 16, 2011, in C.T.A. EB No. 664 (C.T.A. Case No. 7125).

The pertinent factual and procedural antecedents of the case are as follows:

Respondent was a corporation which was duly organized under and by virtue of the laws of the Republic of the Philippines on August 1, 1990 with a term of existence of fifty (50) years. Its BIR-registered address was at 101 Marcos Alvarez Avenue, Barrio Talon, Las Piñas City. In a joint special meeting held on March 19, 2001, majority of the members of the Board of Directors and the stockholders representing more than two-thirds (2/3) of the entire subscribed and outstanding capital stock of herein respondent corporation, resolved to dissolve the corporation by shortening its corporate term to March 31,

[1] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelita R. Fabon-Victorino concurring; Annex "A" to Petition, *rollo* pp. 33-48.

[2] Annex "B" to Petition, *id*. at 50-53.

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2001.[3] Subsequently, respondent moved out of its address in Las Piñas City and transferred to Carmelray Industrial Park, Canlubang, Calamba, Laguna.

On June 26, 2001, respondent submitted two (2) letters to the Bureau of Internal Revenue (*BIR*) Revenue District Officer of Revenue District Office (*RDO*) No. 53, Region 8, in Alabang, Muntinlupa City. The first letter, dated April 26, 2001, was a notice of respondent's dissolution, in compliance with the requirements of Section 52(c) of the National Internal Revenue Code.[4] On the other hand, the second letter, dated June 22, 2001, was a manifestation indicating the submission of various documents supporting respondent's dissolution, among which was BIR Form No. 1905, which refers to an update of information contained in its tax registration.[5]

Thereafter, in a Formal Assessment Notice (*FAN*) dated January 17, 2003, petitioner assessed respondent the aggregate amount of ₱18,671,343.14 representing deficiencies in income tax, value added tax, withholding tax on compensation, expanded withholding tax and documentary stamp tax, including increments, for the taxable year 1999.[6] The FAN was sent by registered mail on January 24, 2003 to respondent's former address in Las Piñas City.

On March 5, 2004, the Chief of the Collection Section of BIR Revenue Region No. 7, RDO No. 39, South Quezon City, issued a First Notice Before Issuance of Warrant of Distraint and Levy, which was sent to the residence of one of respondent's directors.[7]

On March 19, 2004, respondent filed a protest letter citing lack of due process and prescription as grounds.[8] On April 16,

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[3] See Exhibit "H", Records, Vol. I, pp. 216-218.

[4] See Exhibit, "J-2", *id.* at 247.

[5] See Exhibit "J", *id.* at 245.

[6] See Exhibit "A", *id.* at 154-155.

[7] See Exhibit "C", *id.* at 171.

[8] Exhibit "D", *id.* at 173-179.

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2004, respondent filed a supplemental letter of protest.[9] Subsequently, on June 14, 2004, respondent submitted a letter wherein it attached documents to prove the defenses raised in its protest letters.[10]

On January 10, 2005, after 180 days had lapsed without action on the part of petitioner on respondent's protest, the latter filed a Petition for Review[11] with the CTA.

Trial on the merits ensued.

On February 17, 2010, the CTA Special First Division promulgated its Decision,[12] the dispositive portion of which reads, thus:

> WHEREFORE, the Petition for Review is hereby **GRANTED**. The assessments for deficiency income tax in the amount of ₱14,227,425.39, deficiency value-added tax of ₱3,981,245.66, deficiency withholding tax on compensation of ₱49,977.21, deficiency expanded withholding tax of ₱156,261.97 and deficiency documentary stamp tax of ₱256,432.91, including increments, in the aggregate amount of ₱18,671,343.14 for the taxable year 1999 are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**.[13]

The CTA Special First Division ruled that since petitioner was actually aware of respondent's new address, the former's failure to send the Preliminary Assessment Notice and FAN to the said address should not be taken against the latter. Consequently, since there are no valid notices sent to respondent, the subsequent assessments against it are considered void.

Aggrieved by the Decision, petitioner filed a Motion for Reconsideration, but the CTA Special First Division denied it in its Resolution[14] dated July 13, 2010.

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[9] Exhibit "E", *id.* at 164-166.

[10] See Exhibit "G", *id.* at 167-170.

[11] Records, vol. I, pp. 1-14.

[12] *Id.* at 1051-1068.

[13] *Id.* at 1067.

[14] *Id.* at 1097-1100.

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Petitioner then filed a Petition for Review with the CTA *En Banc*.[15]

On June 16, 2011, the CTA *En Banc* promulgated its assailed Decision denying petitioner's Petition for Review for lack of merit. The CTA *En Banc* held that petitioner's right to assess respondent for deficiency taxes for the taxable year 1999 has already prescribed and that the FAN issued to respondent never attained finality because respondent did not receive it.

Petitioner filed a Motion for Reconsideration, but the CTA *En Banc* denied it in its Resolution dated September 16, 2011.

Hence, the present petition with the following Assignment of Errors:

I

THE HONORABLE CTA *EN BANC* ERRED IN RULING THAT THE RIGHT OF PETITIONER TO ASSESS HEREIN RESPONDENT FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX, WITHHOLDING TAX ON COMPENSATION, EXPANDED WITHHOLDING TAX AND DOCUMENTARY STAMP TAX, FOR TAXABLE YEAR 1999 IS BARRED BY PRESCRIPTION.

II

THE HONORABLE COURT OF TAX APPEALS, *EN BANC,* ERRED IN RULING THAT THE FORMAL ASSESSMENT NOTICE (FAN) FOR RESPONDENT'S DEFICIENCY INCOME TAX, VALUE-ADDED TAX, WITHHOLDING TAX ON COMPENSATION, EXPANDED WITHHOLDING TAX AND DOCUMENTARY STAMP TAX FOR TAXABLE YEAR 1999 HAS NOT YET BECOME FINAL, EXECUTORY AND DEMANDABLE.[16]

The petition lacks merit.

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[15] CTA *En Banc rollo,* pp. 6-18.

[16] *Rollo*, pp. 20-21.

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Petitioner contends that, insofar as respondent's alleged deficiency taxes for the taxable year 1999 are concerned, the running of the three-year prescriptive period to assess, under Sections 203 and 222 of the National Internal Revenue Act of 1997 (Tax Reform Act of 1997) was suspended when respondent failed to notify petitioner, in writing, of its change of address, pursuant to the provisions of Section 223 of the same Act and Section 11 of BIR Revenue Regulation No. 12-85.

Sections 203, 222 and 223 of the Tax Reform Act of 1997 provide, respectively:

Sec. 203. ***Period of Limitation Upon Assessment and Collection.*** **–** Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (emphasis supplied)

Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

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(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period.

The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided*, *however*, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

Sec. 223. *Suspension of Running of Statute of Limitations.* - **The running of the Statute of Limitations provided in Sections 203 and 222** on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, **shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter**; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; **when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended;** when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (emphasis supplied)

In addition, Section 11 of BIR Revenue Regulation No. 12-85 states:

Sec. 11. *Change of Address*. – In case of change of address, the taxpayer must give a written notice thereof to the Revenue District

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Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appear in is tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.

It is true that, under Section 223 of the Tax Reform Act of 1997, the running of the Statute of Limitations provided under the provisions of Sections 203 and 222 of the same Act shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected. In addition, Section 11 of Revenue Regulation No. 12-85 states that, in case of change of address, the taxpayer is required to give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business. However, this Court agrees with both the CTA Special First Division and the CTA *En Banc* in their ruling that the abovementioned provisions on the suspension of the three-year period to assess apply only if the BIR Commissioner is not aware of the whereabouts of the taxpayer.

In the present case, petitioner, by all indications, is well aware that respondent had moved to its new address in Calamba, Laguna, as shown by the following documents which form part of respondent's records with the BIR:

1) Checklist on Income Tax/Withholding Tax/Documentary Stamp Tax/Value-Added Tax and Other Percentage Taxes;[17]
2) General Information (BIR Form No. 23-02);[18]
3) Report on Taxpayer's Delinquent Account, dated June 27, 2002;[19]

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[17] Exhibit "O", BIR records, pp. 865-866.

[18] Exhibit "P", *id.* at 864.

[19] Exhibit "Q", *id.* at 862.

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4) Activity Report, dated October 17, 2002;[20]
5) Memorandum Report of Examiner, dated June 27, 2002;[21]
6) Revenue Officer's Audit Report on Income Tax;[22]
7) Revenue Officer's Audit Report on Value-Added Tax;[23]
8) Revenue Officer's Audit Report on Compensation Withholding Taxes;[24]
9) Revenue Officer's Audit Report on Expanded Withholding Taxes;[25]
10) Revenue Officer's Audit Report on Documentary Stamp Taxes.[26]

The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.

The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the abovementioned records:

1) Letter, dated September 27, 2001, signed by Revenue Officer I Eugene R. Garcia;[27]

2) Final Request for Presentation of Records Before Subpoena Duces Tecum, dated March 20, 2002, signed by Revenue Officer I Eugene R. Garcia.[28]

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[20] Exhibit "R", *id*. at 861.

[21] Exhibit "S"/Exhibit "4" and "4-A", *id*. at 859-860.

[22] Exhibit "T", *id*. at 858.

[23] Exhibit "U", *id.* at 856.

[24] Exhibit "V", *id.* at 854.

[25] Exhibit "W", *id.* at 853.

[26] BIR records, p. 852.

[27] *Id.* at 2.

[28] *Id.* at 1.

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Moreover, the CTA found that, based on records, the RDO sent respondent a letter dated April 24, 2002 informing the latter of the results of their investigation and inviting it to an informal conference.[29] Subsequently, the RDO also sent respondent another letter dated May 30, 2002, acknowledging receipt of the latter's reply to his April 24, 2002 letter.[30] These two letters were sent to respondent's new address in Laguna. Had the RDO not been informed or was not aware of respondent's new address, he could not have sent the said letters to the said address.

Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was "returned to sender." This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City.[31] Yet, despite this occurrence, petitioner still insisted in mailing the FAN to respondent's old address.

Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed.

It bears stressing that, in a number of cases, this Court has explained that the statute of limitations on the collection of taxes primarily benefits the taxpayer. In these cases, the Court exemplified the detrimental effects that the delay in the assessment and collection of taxes inflicts upon the taxpayers. Thus, in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.,*[32] this Court echoed Justice Montemayor's disquisition in his dissenting opinion in *Collector*

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[29] Exhibit "X", *id.* at 847.

[30] Exhibit "Y", *id.* at 645.

[31] See TSN, July 18, 2006, pp. 4-11.

[32] G.R. No. 167146, October 31, 2006, 506 SCRA 427.

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of Internal Revenue v. Suyoc Consolidated Mining Company,[33] regarding the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made, thus:

> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court x x x. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay.[34]

Likewise, in *Republic of the Philippines v. Ablaza,*[35] this Court elucidated that the prescriptive period for the filing of actions for collection of taxes is justified by the need to protect law-abiding citizens from possible harassment. Also, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue,*[36] it was held that the statute of limitations on the assessment and collection of taxes is principally intended to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment deprives the taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after

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[33] 104 Phil. 819, 833-834 (1958).

[34] *Commissioner of Internal Revenue v. Philippine Global Communication, Inc., supra* at 439.

[35] 108 Phil. 1105, 1108 (1960).

[36] G.R. No. 139736, October 17, 2005, 473 SCRA 205, 225.

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the expiration of a reasonable period of time. Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.,*[37] this Court ruled that the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, the exceptions to the rule on prescription should be strictly construed.

It might not also be amiss to point out that petitioner's issuance of the *First Notice Before Issuance of Warrant of Distraint and Levy*[38] violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[39] In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.

It is true that taxes are the lifeblood of the government. However, in spite of all its plenitude, the power to tax has its limits.[40] Thus, in *Commissioner of Internal Revenue v. Algue, Inc.,*[41] this Court held:

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such

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[37] G.R. No. 104171, February 24, 1999, 303 SCRA 546, 554.

[38] Records, Vol. I, p. 171.

[39] *Commissioner of Internal Revenue v. Reyes/Reyes v. Commissioner of Internal Revenue,* G.R. Nos. 159694/163581, January 27, 2006, 480 SCRA 382, 396.

[40] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014.

[41] G.R. No. L-28896, February 17, 1988, 158 SCRA 9.

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collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

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It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed.[42]

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[43]

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[42] *Id.* at 11 and 16-17.

[43] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633, 647.

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As to the second assigned error, petitioner's reliance on the provisions of Section 3.1.7 of BIR Revenue Regulation No. 12-99[44] as well as on the case of *Nava v. Commissioner of Internal Revenue*[45] is misplaced, because in the said case, one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation. In the instant case, the FAN was sent to the wrong address. Thus, the CTA is correct in holding that the FAN never attained finality because respondent never received it, either actually or constructively.

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Tax Appeals *En Banc,* dated June 16, 2011, and its Resolution dated September 16, 2011, in C.T.A. EB No. 664 (C.T.A. Case No. 7125), are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Villarama, Jr.,* and *Reyes, JJ.,* concur.

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[44] Section 3.1.7 – *Constructive Service*. 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. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case.

[45] G.R. No. L-19470, January 30, 1965, 13 SCRA 104.

* Designated Acting Member, in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated November 3, 2014.