REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

APEX 5678 ROCKWELL INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10673

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES *JJ.*

Promulgated:
JUN 24 2025
1:00 pm

x- -x

RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is respondent's *Motion for Reconsideration (Decision dated 19 February 2025)* filed via accredited courier on March 11, 2025 and received by the Court on March 12, 2025. This was followed by its electronic filing on March 12, 2025. Petitioner personally filed its *Comment/Opposition (to the Respondent's Motion for Reconsideration dated 11 March 2025)* on March 17, 2025 followed by its electronic filing on April 11, 2025.

Respondent prays for the reversal of the Court's Decision dated February 19, 2025, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present Amended Petition for Review is **GRANTED**. For being void, the **FLD with Details of Discrepancies and FAN**, all dated January 27, 2021, assessing petitioner for deficiency income tax, VAT and DST in the aggregate amount of P17,062,580.97, inclusive of surcharge and interest, for TY 2017, **as well as the WDL dated August 26, 2021, directed against petitioner, are CANCELLED and SET ASIDE.**

> Accordingly, respondent is **ENJOINED** and **PROHIBITED** from collecting or taking further action on the subject deficiency taxes against petitioner for TY 2017.
>
> **SO ORDERED.**

Respondent's *Motion for Reconsideration* is based on the sole ground that the Court erred in ruling that he failed to prove petitioner's receipt of the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) thereby depriving the latter of its right to due process.

Respondent disagrees with the Court's conclusion and maintains that there was no violation of petitioner's right to due process because the Registry Receipt attached to the BIR Records, allegedly show that the FLD/FAN was properly and duly served upon and received by petitioner at its registered address at the 5th and 6th Floor, Rockwell Business Center Tower, Ortigas Avenue, Pasig City.

Respondent cites Section 19, Rule 132 of the Revised Rules of Evidence and argues that the Registry Receipt is considered as a written official act of the revenue officers of the Bureau of Internal Revenue (BIR) and is thus *prima facie* evidence that the FLD/FAN was served to the registered address indicated therein.

In its *Comment/Opposition,* petitioner dismisses the above arguments of respondent as a mere rehash of his arguments submitted during trial and which were all considered and ruled upon by the Court in its Decision dated February 19, 2025.

Petitioner agrees with the assailed Decision cancelling the FLD/FAN for taxable year (TY) 2017 on the ground that respondent failed to prove by sufficient and competent evidence that it received the same in the regular course of mail. In the face of its direct denial of receipt of the subject FLD/FAN, petitioner argues that existing jurisprudence demands that respondent submit competent proof that these documents were indeed served and received by petitioner or its authorized representative. Petitioner alleges that respondent failed to discharge the burden of proof.

Petitioner also supports the assailed Decision of the Court in cancelling the subject deficiency assessments and the

Warrant of Distraint and/or Levy (WDL) because tax assessments issued in violation of the taxpayer's right to due process are considered void and without any effect, thus depriving the respondent from collecting the alleged deficiency taxes.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of respondent's *Motion for Reconsideration* with the Court.

On February 19, 2025, the Court issued a Decision in the above-captioned case, granting Petitioner's Petition for Review and cancelling the FLD/FAN for TY 2017. A copy of the Decision was received by respondent on February 24, 2025.[1] On March 11, 2025, petitioner filed the instant Motion for Reconsideration via accredited courier.

Counted from respondent's receipt of the assailed Decision, petitioner had until March 11, 2025 to file his motion for reconsideration pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) where a party dissatisfied with a Decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.** *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

As mentioned, respondent filed the instant Motion for Reconsideration on March 11, 2025, hence timely filed.

As regards the substantive merits of respondent's arguments, the Court finds no new or compelling reasons to reverse nor modify the assailed Decision. For emphasis, the Court will hereafter reiterate its ruling therein.

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[1] Division Docket, Volume IV, p. 1652.

The issue centers on the factual circumstances revolving around the service and receipt of the FLD/FAN to herein petitioner.

Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, mandates that a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise the assessment shall be void.[2] The Supreme Court emphasized the underlying reason for this vital requirement in the case of *CIR vs. Fitness by Design*[3] in this manner, thus:

> The rationale behind the requirement that taxpayers shall be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law.

The implementing rules and regulations, particularly, Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 outline the due process requirements of informing a taxpayer of its alleged tax liabilities by way of a tax assessment and the modes of serving the same to the taxpayer. As detailed in the assailed Decision, respondent chose to send the FLD/FAN via registered mail. On the other hand, petitioner alleges that all other official notices prior to the FLD/FAN including the Preliminary Assessment Notice (PAN) were personally served to its registered business address and it was only the FLD/FAN that was served via registered mail. Petitioner then denies ever having received the FLD/FAN thereby shifting the burden of proof of service and receipt of the FLD/FAN to respondent. Unfortunately, the evidence offered by respondent was found (by the Court) to be insufficient thereby rendering the FLD/FAN void.

In finding the evidence of respondent insufficient, the Court analyzed the documents offered by respondent and the reasons why it failed to discharge the burden of proof shifted upon him, to wit:

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[2] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9 2016; *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.
[3] *Ibid.*

To prove that the FLD/FAN was issued and served to petitioner, through registered mail, respondent offered the following documents, to wit:

Exhibit No.	Description	Purpose
"R-5"	FLD/FAN dated January [27], 202[1]	• To prove that the assessment made against Petitioner is valid and with factual and legal bases. • To prove that due process was accorded to Petitioner.
"R-5-A"	Registry Receipt No. RC 294710188ZZ	• To prove that the FLD/FAN was duly served to Petitioner.

Relative to the foregoing documents, RO Troy Dela Cruz testified in his Judicial Affidavit, as follows:

> (10) Q: What happened next, if any?
>
> A: The Formal Letter of Demand and Assessment Notices (FLD/FAN) dated January 27, 2021 was issued and was served through registered mail to the Petitioner with Registry Receipt No. RC 294710188ZZ.
>
> (11) Q: I am showing to you FLD/FAN dated January 27, 2021 and Registry Receipt No. RC294710188ZZ. What is the relation of these documents to what you have just mentioned?
>
> A: These are the same documents I mentioned.

It can, thus, be inferred from the foregoing that the only evidence adduced by respondent in proving the fact of mailing is the corresponding Registry Receipt supposedly issued by the Postmaster for the FLD/FAN.

Unfortunately, the said evidence hardly suffice to prove that the said notices were indeed served on, and received by, petitioner or by any of its authorized representative/s, pursuant to the above-mentioned rules. **The said Registry Receipt merely proved the fact of mailing, and nothing more. In other words, the fact of receipt by petitioner or its authorized representative is not indicative in the said Registry Receipt.**[4] *(Emphasis supplied)*

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[4] Division Docket, Volume IV, pp. 1665-1666.

We agree with petitioner that the arguments raised by respondent in the instant Motion for Reconsideration are mere rehash of those already fully considered and resolved in the assailed Decision, therefore the Court finds no cogent reason to reverse or modify the same.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Decision dated 19 February 2025)* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice