REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-104

-versus-

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

ROBERT SIA and
JOHN KENNETH L. OCAMPO,
Accused.

Promulgated:
OCT 20 2017
4:15 p.m.

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RESOLUTION

For resolution is the Motion for Reconsideration on the Civil Aspect of the Decision filed by the plaintiff, praying that the Court's Decision on the civil aspect of the case be reconsidered and that the assessment issued by the Bureau of Internal Revenue (BIR) against Roxy and accused be declared valid, and order the latter to pay the delinquent tax deficiencies inclusive of charges and interests.

In the Motion for Reconsideration, plaintiff argues that the right of the BIR to collect is based on a valid assessment that is final, executory and demandable; that while the defense denied having received the assessment notices and formal letters of demand, the plaintiff was able to prove that the same were received by Roxy in the regular course of mail; AND that the facts to be proved to raise the presumption was substantially testified on by Mr. Armando Macatangay.

On August 18, 2017, the Court issued a Resolution ordering accused Robert Sia and John Kenneth L. Ocampo to file their respective Comments on the Motion for Reconsideration.

On September 14, 2017, accused Robert Sia and John Kenneth L. Ocampo filed their "Comment/Opposition to Plaintiff's Motion for Reconsideration on the Civil Aspect of the Decision Promulgated on July 19, 2017."

In the said Comment/Opposition, both accused argue that the ground relied upon by the plaintiff in its Motion for Reconsideration has neither factual nor legal basis that could be a valid subject for reconsideration; that there was no valid assessment since the assessment notices were not actually received by the accused; that the right of the government to collect taxes has already prescribed; and that the instant motion was a mere scrap of paper because of absence of a Notice of Hearing.

After evaluation, the Court finds that the Motion for Reconsideration failed to provide the required Notice of Hearing specifying the date and time of hearing of the said motion.

Sections 4 and 5, Rule 15 of the Rules of Court provides:

> Sec.4. *Hearing of Motion.* - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
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> Every written motion required to be heard and the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> Sec. 5. *Notice of hearing.* - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

For failure of the plaintiff to comply with the foregoing procedure, the Motion for Reconsideration filed on August 8, 2018 is a mere scrap of paper.

Assuming however, that the instant motion was properly filed, still, the Court finds plaintiff's arguments to be unmeritorious.

Plaintiff insists that the assessments were valid, hence, the accused should be made liable to pay the deficiency tax.

To reiterate, this Court ruled that plaintiff failed to prove that accused was properly served with the assessment notices. Thus, for failure to prove receipt of the assessment notices, the subject assessment notices were declared invalid.

In the assailed Decision, the Court ruled as follows:

> "Applying the quoted cases in the case at bar, this Court finds that the evidence of the prosecution failed to satisfactorily prove that Roxy actually received the PAN, FAN and Formal Letters of Demand. The prosecution's documentary evidence failed to prove that the assessment notices sent through registered mail were indeed received by Roxy or any of its authorized representatives. The prosecution's witnesses could not positively testify that the FAN and Formal Letters of Demand were actually received by Roxy. Hence, the failure of the BIR to prove receipt of the assessment notices by Roxy leads to the conclusion that no assessment was validly issued.
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> xxx xxx xxx
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> Clearly, therefore, to attribute to accused a "willful failure to pay" the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly and intentionally failed to pay it.
>
> Considering that the prosecution failed to prove the fact of mailing of the PAN, FAN and Formal Letters of Demand, and no evidence was presented to prove that accused actually received the assessments, the Assessment Notice No. 32-1-98, which is the basis of the criminal complainant and Information for willful failure to pay tax under Section 255, cannot be considered a valid assessment which would give rise to an obligation to pay the assessed deficiency taxes on the part of Roxy.
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> There being no valid assessment, accused, therefore, cannot be made liable for non-payment of deficiency taxes as alleged in the Information because as held in ***Commissioner of Internal Revenue vs. Reyes***,[1] a void assessment bears no fruit."

WHEREFORE, the Motion for Reconsideration is DENIED.

[1] G.R. No. 159694, January 27, 2006.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice