REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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DRUGMAKER'S BIOTECH RESEARCH LABORATORIES, INC. (THROUGH ITS REPRESENTATIVE DRUGMAKER'S LABORATORIES, INC.), Petitioner,	**CTA Case No. 8664**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
THE HON. COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 03 2018 : 1:05 pm

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RESOLUTION

UY, J.:

For resolution is respondent's **"MOTION FOR RECONSIDERATION (Re: Decision promulgated on 05 January 2018)"** filed on January 24, 2018, with petitioner's **"OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION"** filed on February 9, 2018, seeking the reconsideration and setting aside of this Court's Decision dated January 5, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the assessment for deficiency income tax and VAT and the Warrant of Distraint and/or Levy issued against petitioner for taxable year 2007 is hereby **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED**."

Respondent's Motion:

In his **MOTION FOR RECONSIDERATION (Re: Decision promulgated on 05 January 2018**, respondent reiterates that the Court has no jurisdiction over the petition since the assessment against petitioner has already become final, executory and demandable. According to respondent, with petitioner's failure to file a valid protest, the assessment became undisputed and has now become final and unappealable. Moreover, assuming without conceding that petitioner did not receive the assessment notices, petitioner nevertheless belatedly filed the present *Petition*.

Respondent likewise argues that the Court erred in declaring the assessment void for the alleged failure of respondent to prove the service of the assessment notices.

According to respondent, having admitted in its *Petition* that it received the *Letter Notice* (LN) No. 057-RLF-07-00-00015[1] on July 13, 2009, *Letter of Authority* (LOA) No. LOA-2009-00016815[2] dated April 30, 2010 and the *Warrant of Distraint and/or Levy* (WDL) on April 23, 2013[3], petitioner is now estopped from denying receipt of the *Preliminary Assessment Notice* (PAN), *Amended PAN* and *Final Assessment Notice* (FAN). Moreover, respondent insists that the fact of mailing of the assessment notices were duly supported by *Registry Return Receipts* and *Certification* issued by the Philippine postal Corporation.

Allegedly, the bare denial of petitioner as to the receipt of the assessment notice does not contradict the disputable presumption laid down in Section 3, Rule 131 of the Rules of Court.

Petitioner's Opposition:

In its **OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION,** petitioner argues that the Court has jurisdiction over its *Petition for Review*. Moreover, petitioner submits that it is not estopped from denying receipt of the PAN & FAN just because it admitted receiving previous letters from respondent.

Petitioner likewise asserts that respondent cannot avail of the presumption of regularity to prove that petitioner received the notices

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[1] Exhibits "P-1160-a" and "R-2", BIR Records, p. 80.
[2] Exhibits "P-1159" and "R-1", BIR Records, p. 89.
[3] Exhibit "P-1162", BIR Records, p. 148.

considering that right from the beginning, petitioner had already questioned the fact of mailing of these assessment notices. Petitioner further contends that respondent failed to present witness who had personal knowledge about the fact of mailing as well as the receipt of the assessment notices. Allegedly, there exist discrepancies in the registry return receipts presented by respondent. Additionally, respondent allegedly failed to present witness who had personal knowledge on the receipt of the notices.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

A void assessment does not ripen to finality nor create a demandable obligation.

To reiterate, the Court finds that the pieces of evidence offered by respondent failed to satisfactorily prove that the PAN, Amended PAN and FAN were actually received by petitioner's authorized representative. Respondent's reliance on the registry return receipts as well as the Certification issued by the Philippine Postal Corporation is not sufficient to prove the fact of mailing of the assessment notices. Based on the findings of this Court, the following are the irregularities noted in the mailing of the assessment notices:

1. Respondent's sole witness, Revenue Officer (RO) Castelo, admitted categorically that she has no personal knowledge on the fact of mailing the assessment notices. Moreover, RO Castelo likewise failed to confirm whether the recipients indicated on the registry return receipts were the authorized employees of petitioner.

2. The *Registry Return Receipts* for the PAN, amended PAN and FAN were not properly filled out. Pertinently, the registry return receipts number is not indicated and as such the receipts cannot be properly identified.

3. The *Certification* issued by the Philippine Postal Service Corporation did not specify the documents mailed to petitioner.

Based on the foregoing, this Court ruled that respondent failed to establish that the assessment notices were indeed served by registered mail to petitioner.

As to respondent's assertion that an assessment must be disputed first before seeking redress to this court, it must be noted that respondent failed to prove petitioner's receipt of the assessment notices. Stated otherwise, petitioner, in effect, was not given the opportunity to dispute the assessment.

Accordingly, this Court, in its assailed Decision, was constrained to declare the subject deficiency tax assessment for taxable year 2007 void, for having been issued in violation of the due process requirements under the law and Revenue Regulation No. 12-99. And, in view of the nullity of the assessment, the same cannot ripen into finality nor create demandable obligation on the part of petitioner. To reiterate, a void assessment does not bear fruit.[4]

Estoppel is not applicable.

This Court cannot countenance respondent's argument that by admitting receipt of the LN, LOA and the WDL, petitioner is now estopped from denying receipt of the PAN, Amended PAN and FAN.

Estoppel *in pais* (equitable estoppel) arises when one, by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally, or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[5]

In this case, it is illogical to conclude that by admitting the receipt of the LN, LOA and the WDL, petitioner is estopped from denying receipts of the assessment notices. The assessment notices are different and have distinct function from the other letters/notices issued by respondent. As such, the admission of receipt of one letter/notice cannot imply nor result to the admission of the receipt of another notice, considering that every notice or letter has a distinct function and stems from an entirely separate procedure/process.

Further, in *Commissioner of Internal Revenue, vs. Kudos Metal*

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[4] *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 189-190 (2006).
[5] *Panay Electric Co., Inc. vs. Court of Appeals, et al.,* G.R. No. 81939, June 29, 1989.

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Corporation,[6] the Supreme Court held as follows:

> "xxx. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. **As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.** It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. **Simply put, the doctrine of estoppel must be sparingly applied.**" *(Emphases supplied)*

Based on the foregoing, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. In the instant case, since the failure to issue assessment notices is a violation of due process and will result to a void assessment, respondent, therefore, cannot use the doctrine of estoppel to validate an irregular act. Consequently, the said doctrine cannot give validity to a void assessment.

Presumption of regularity is not conclusive and may be contradicted by evidence to the contrary.

Respondent argues that the presumption of regularity must prevail since he was able to produce the registry return card and the Certification from the Philippine Postal Corporation and that these documents are public document and issued in the performance of official duties. Further, respondent contends that the bare denial of petitioner as to the receipt of the notices, without competent proof, does not contradict the disputable presumption under Sec 3 (v), Rule 131 of the Rules of Court, *to wit:*

> "SEC. 3. *Disputable presumptions.* -The following presumptions are satisfactory, if uncontradicted, but may be contradicted and overcome by other evidence:
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> xxx xxx xxx

[6] G.R. No. 178087, 5 May 2010.

(v) That a letter duly directed and mailed was received in the regular course of the mail;"

We disagree.

While it may be presumed that the registry return receipts and the Certification from the Philippine Postal Corporation were issued in the performance of official duties and that the said notices were received in the regular course of the mail, such presumption is not conclusive and may be rebutted by competent and satisfactory evidence to the contrary.

As discussed in the Assailed Decision and reiterated above, the irregularities surrounding the issuance and mailing of the assessment notices, led this Court to conclude that respondent failed to prove that the assessment notices were mailed or received by petitioner. In particular, the Court found the following circumstances as sufficient grounds to overcome the presumption of regularity: failure of respondent to prove that the recipient indicated in the registry return receipt were the authorized employees of petitioner; the registry return receipts were not properly filled out and thus cannot be identified; and the Certification did not specify the documents mailed to petitioner.

Finding no compelling reason to reconsider, modify or reverse the assailed Decision, We reiterate Our ruling that indeed no assessment notice was received by respondent. Accordingly, the assessment in this case is a nullity.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

I maintain my Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice