REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **CORAZON C. GERNALE,** Accused.	**CTA CRIM CASE NO. O-336** For: Violation of Section 255 in relation to Section 253(d) & 256 of the 1997 Tax Code Members: **FABON- VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.* Promulgated: DEC 17 2018 11:20 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is plaintiff's "Motion for Reconsideration on the Civil Aspect of the Decision"[1] filed on October 17, 2018, praying for the following:

1) the Court's Decision on the civil aspect of the case be reconsidered;

2) the assessment issued by the Bureau of Internal Revenue ("BIR") against Gernale Electrical Contractor Corporation ("GECC") and Accused Corazon C. Gernale ("Accused Gernale") be declared valid; and

3) order GECC and Accused Gernale to pay the delinquent tax deficiencies inclusive of charges and interests.

[1] Docket, pp. 836-841.

Plaintiff contends that the right of the BIR to collect is based on a valid assessment that is already final, executory and demandable. Plaintiff points out that while the defense denied having received the assessment notices and formal letter of demand, plaintiff was able to prove that the same were received by GECC in the regular course of mail. Lastly, that the facts to be proved to raise the presumption set forth in Section 3(v), Rule 131 of the Rules of Court, was substantially testified on by Mr. Armando Macatangay.

On October 29, 2018, the Court issued a Resolution[2] ordering Accused Gernale to file her comment on the motion for reconsideration.

On November 21, 2018, a Records Verification Report was issued by the Judicial Records Division stating that no comment was filed.

After evaluation, the Court finds that plaintiff's "Motion for Reconsideration on the Civil Aspect of the Decision" did not 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:

> "**Section 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 the 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. (4a)
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> **Section 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. (5a)"

For failure of the plaintiff to comply with the foregoing procedure, the said motion for reconsideration is a mere scrap of paper.

Assuming without conceding however that the instant motion was properly filed, still the Court finds plaintiff's arguments to be untenable. Plaintiff maintains that the BIR assessment was valid. Consequently, GECC and Accused Gernale should be made liable to pay the deficiency tax.

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2 *Id.* at p. 843.

As we have painstakingly discussed in the Assailed Decision[3], plaintiff was not able to prove that Accused Gernale was properly served with the Preliminary Assessment Notice ("PAN"). For failure to prove receipt of the PAN, the subject assessment was declared invalid. There being no valid assessment, there is no obligation to pay the alleged assessed deficiency taxes, either on the part of GECC or Accused Gernale. In other words, they cannot be made liable for non-payment of deficiency taxes as alleged in the Information.

In the assailed Decision, We have ruled as follows:

> "[F]rom the totality of the evidence presented by the plaintiff, the two facts to be proved in order to raise the presumption in Section 3(v), Rule 131 of the Rules of Court (*i.e.* that the letter was properly addressed with postage prepaid and was sent), were not properly proven in this case. Plaintiff was able to establish that the BIR issued the PAN to GECC according to the testimony of Revenue Officer-Reviewer Gloria S. Maliwanag. However, that the said PAN was mailed to the registered address of GECC and the same was received by GECC and/or accused was not proven by any testimonial or documentary evidence.
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> Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99, clearly state that the taxpayer shall be informed in writing of the law and the facts on which the assessment is based and it should be given the opportunity to respond to the PAN. It further provides that in the event that the taxpayer fails to respond to the PAN, the corresponding assessment will be issued.
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> The Supreme Court has already ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, is a denial of due process. In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, it was held:
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> xxx xxx xxx
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> Applying the above Supreme Court ruling in the case at bar, this Court finds that the evidence of the plaintiff failed to satisfactorily prove that GECC or any of its authorized representatives actually received the PAN. The plaintiff's witnesses could not positively testify that the PAN was actually received by

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[3] *Id.*, pp. 813-834.

GECC. Hence, the failure of the BIR to prove receipt of the PAN by GECC leads to the conclusion that no assessment was validly issued.

And since the subject assessment is deemed null and void, it follows therefore that the PCL, FNBS and WDL issued to GCC are void as well. As held in *Commissioner of Internal Revenue vs. Reyes*, a void assessment bears no fruit.

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Considering that the plaintiff failed to prove the fact of mailing of the PAN, and no evidence was presented to prove that GECC or any of its authorized representative actually received the PAN, BIR Assessment/Demand Notice No. 34-2003 (which is the basis of the criminal complaint and Information for willful failure to pay tax under Section 255 of the 1997 NIRC, as amended) cannot be considered a valid assessment which would give rise to an obligation to pay the alleged assessed deficiency taxes of GECC.

There being no valid assessment, accused Gernale, therefore, cannot be made liable for non-payment of deficiency taxes as alleged in the Information."

We see no reason to reverse Our Decision dated September 26, 2018 regarding the civil aspect thereof.

WHEREFORE, premises considered, plaintiff's "Motion for Reconsideration on the Civil Aspect of the Decision" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice