REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SHIP TO SHORE MEDICAL ASSIST, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10550

Members:

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

Promulgated:

OCT 30 2024
11:36 a.m.

x- -x

R E S O L U T I O N

MANAHAN, *J.*:

This resolves respondent's *Motion for Reconsideration (Re: Decision dated June 6, 2024)* filed on July 5, 2024 ("***Motion***"),[1] with petitioner's *Comment/Opposition [To the Motion for Reconsideration dated 04 July 2024]* filed on July 19, 2024.[2]

Respondent's *Motion* prays that the Court reconsider and set aside its *Decision* dated June 6, 2024 ("**assailed *Decision***")[3] which cancelled the assessments against petitioner for deficiency income tax, value-added tax ("VAT"), withholding tax on compensation ("WTC"), improperly accumulated earnings tax ("IAET"), and compromise penalty for taxable year 2016. The dispositive portion of the assailed *Decision* reads:

> **ACCORDINGLY**, the present *Petition for Review* is **GRANTED**. The FLD/FAN dated January 14, 2020 assessing petitioner of deficiency income tax, VAT, WTC, IAET, and compromise penalty, all for taxable year 2016, in the aggregate amount of ₱23,492,099.42 is **CANCELLED** and **SET ASIDE**. The CIR, his

[1] Docket – Vol. II, pp. 769-784.
[2] Docket – Vol. II, pp. 786-804.
[3] Docket – Vol. II, pp. 749-768.

> representatives or agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject assessments.
>
> **SO ORDERED.**

In its *Motion*, respondent maintains that the Court has no jurisdiction over the *Petition for Review*[4] since the subject tax assessments have already attained finality. Petitioner should have filed its *Petition for Review* within 30 days from initial receipt of the *Notice of Garnishment* on February 15, 2021, not from subsequent notice thereof on May 10, 2021 nor from receipt of the *second Notice of Garnishment* dated June 7, 2021.

Respondent argues that even assuming that the Court has jurisdiction, the *Petition for Review* should not have been granted on the ground that the assessment notices were not received by an authorized representative. The requirement that the recipient must be duly authorized applies only in cases of personal service. Where the assessment notice is sent through registered mail or licensed courier, the security guard can properly receive the same.

In its *Comment/Opposition*, petitioner contends that it is incumbent upon respondent to prove that petitioner received the *Notice of Garnishment* dated February 15, 2021. Respondent failed to do so. On the other hand, petitioner was able to establish that such notice was returned to sender. Petitioner stresses that it did not receive any Final Assessment Notice ("FAN") or Final Letter of Demand ("FLD"), thereby depriving it of the opportunity to protest the assessment. Despite this procedural defect, respondent arbitrarily issued the *Notice of Garnishment*.

Petitioner also notes that respondent's knowledge of its new address is shown by the fact that petitioner received the *Notice of Informal Conference* and *Preliminary Assessment Notice* at such address.

Petitioner avers that respondent's own guidelines prefer personal service of assessment notices, and only when it is not

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[4] Docket – Vol. I, pp. 7 to 29.

possible shall the same be served by substituted service or by mail. Unlike in the cases mentioned by respondent wherein the authority of the security guard is admitted by the taxpayer, "SG Carillo," the recipient of the FAN/FLD in this case, has no authority whatsoever.

We now resolve.

First, on the matter of jurisdiction, the Court finds without merit respondent's contention that the 30-day period to appeal should be reckoned from February 15, 2021. As explained in the assailed *Decision*,

> ...aside from mere allegation that petitioner received the *Notice of Garnishment* dated February 15, 2021 on even date, respondent did not offer any evidence to support such claim.[5]

In the present *Motion*, respondent merely reiterated its allegation and did not present any new argument to convince the Court otherwise.

Meanwhile, petitioner proved non-receipt of the *Notice of Garnishment* dated February 15, 2021 through the registry return card and testimony of Zyra Mae Oswa, Branch Manager of BPI Alfaro Branch.

As to the second *Notice of Garnishment* dated June 7, 2021, neither party presented evidence to prove receipt nor non-receipt thereof; hence, the Court applied the presumption that the same was received in the regular course of the mail[6] and ruled that:

> The estimated turnaround time for registered mail to be delivered is seven (7) working days.[7] Even assuming that petitioner received the second *Notice of Garnishment* on the earliest possible date, *i.e.* the same day it was mailed,

[5] Docket – Vol. II, p. 759.
[6] RULES OF COURT, Rule 131, Sec. 3.
[7] Philippine Postal Corporation, *Post Office Delivery Lead Time.* https://phlpost.gov.ph/postal-office-delivery-lead-time. Accessed on April 4, 2023.

> petitioner would have had 30 days from June 7, 2021, or until July 7, 2021, within which to file its judicial appeal. As the present *Petition for Review* was filed on June 7, 2021, the Court properly acquired jurisdiction to entertain the case.

Second, on the matter of due process, the Court finds untenable respondent's contention that the requirement of designation and authority applies only in personal service. In *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,[8] the Supreme Court highlighted the burden of the CIR to establish actual or constructive service of the assessment on the taxpayer or its duly authorized representative, even if the mode of service is through registered mail:

> To prove that the FLD-DDAN was properly served on SEGI, the CIR merely presented and formally offered in evidence the registry receipt, the certification issued by the Philippine Postal Corporation, and the testimonies of Ocampo and Victoria. Their respective narrations show that Ocampo placed the assessment notice in a sealed envelope and delivered the mail matter to the Post Office of San Fernando Pampanga on January 8, 2010, while Victoria delivered the mail matter recorded as registered letter no. 44 to Ms. Rose Ann Gomez, an administrative officer of SM City Pampanga on January 13, 2010. Victoria testified that he did not attempt to directly deliver the said mail to the SEGI's place of business.
>
> Clearly, the testimonies of Ocampo and Victoria merely proved that the FLD-DDAN was served only on an administrative officer of SM City Pampanga, who was allegedly in charge of receiving mail matters for all mall tenants like SEGI. However, ***their testimonies fell short in showing that the FLD-DDAN was either actually or constructively served on SEGI or its duly authorized representative***, as required by Secs. 3.1.4 and 3.1.7 of RR No. 12-99.

[8] G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

The BIR cannot relieve itself of its duty to ensure receipt of the assessment notices by the taxpayer or its duly authorized representative through the mere expedient of resorting to service by mail. Again, unless the recipient possesses a certain degree of authority or discretion, he or she would not grasp the gravity of an assessment notice and its potential financial impact on the taxpayer.[9] Due process demands that service of the assessment notice, regardless of the mode thereof, be made only on the taxpayer or its authorized representative.

On this score, we quote the pertinent portion of the assailed *Decision*:

> In this case, although the records establish that the assessment notices were mailed via LBC and that they were received by a certain "SG Carillo," no evidence was adduced by respondent to prove that SG Carillo was authorized to receive assessment notices on behalf of petitioner. Respondent's mere presentation of the official receipt issued by LBC with the notation "Released to authorized rep. SG Carillo 1/17/20" does not suffice to show that he satisfied the due process mandate under Section 228 of the NIRC that he shall notify *the taxpayer* of his findings.
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> While it is true that under RR No. 18-2013, the official receipt issued by the professional courier company containing identifiable details of the transaction constitute sufficient proof of mailing, this remains a disputable presumption subject to controversion. A direct denial of receipt shifts the burden upon the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.
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> Respondent therefore should have authenticated the notation appearing on the official receipt. However, not only did he fail to do so; as a matter of fact, he expressly admitted that the recipient is not an authorized representative of petitioner.

[9] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202. July 10, 2023 [Per J. Dimaampao, Third Division].

ACCORDINGLY, the respondent's *Motion for Reconsideration (Re: Decision dated June 6, 2024)* filed on July 5, 2024 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
Presiding Justice

HENRY S. ANGELES
Associate Justice