REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

INDRA VERHOMAL MENGHRAJANI, REPRESENTED BY DAUGHTER SAVITRI V. MENGHRAJANI,
Petitioner,

- versus -

HON. KIM JACINTO-HENARES IN HER CAPACITY AS COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9269

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUN 26 2020
11:22 a.m.

x - x

RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is Respondent's **Motion for Reconsideration (Re: Decision dated September 24, 2019)**, filed through registered mail on October 17, 2019 and received by the Court on October 25, 2019, with Petitioner's **Comment (Re: Motion for Reconsideration)**, filed through registered mail on January 28, 2020 and received by the Court on February 6, 2020.

On September 24, 2019, a Decision was promulgated by this Court, cancelling Respondent's deficiency tax assessments against Petitioner for lack of authority and violation of Petitioner's right to due process of law, the dispositive portion of which reads as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Consequently, the assessment on the deficiency Income Tax and VAT for the taxable year 2008 under Assessment Notice Nos. 34-08-IT-4040 and 34-08-VT-4041, both dated January 09, 2013, and the Warrant of Distraint and Levy dated October 23, 2013 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

In his Motion, Respondent moves for reconsideration of the above Decision based on the following grounds:

I. Petitioner was duly served with the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) with Formal Letter of Demand (FLD).

II. The Revenue Officers concerned were authorized by the CIR to conduct the examination on Petitioner's tax liabilities for taxable year 2008 pursuant to the Letter Notice.

As to the first ground, Respondent maintains that Petitioner was duly served with Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) with Formal Letter of Demand (FLD) at her registered address via registered mail. He claims that under the Bureau of Internal Revenue (BIR) Integrated Tax System, Petitioner's status is still active and Respondent has no record that Petitioner had transferred to a different business address. Respondent claims that Petitioner is duty bound to notify or update its registration records with the BIR as required under Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, by filing an application for registration update (BIR Form No. 1905) with her Revenue District Office (RDO). In the absence of such notice, Respondent states that Petitioner cannot validly claim that her right to due process has been violated. Thus, for all intents and purposes, Respondent claims that the PAN, FAN and FLD were deemed served to Petitioner.

With regard to the second ground, Respondent asserts that the subject deficiency tax assessments were issued pursuant to Letter Notice (LN) No. 034-RLF-08-00-00028 dated November 15, 2011, which was signed by the then Commissioner of Internal Revenue Kim Henares. In the LN, Petitioner was required to reconcile their findings of under-declaration between her tax returns and information provided by third party sources for the calendar year ending 2008, and should she agree with the findings of discrepancy, Petitioner was directed to pay the resulting deficiency taxes.

Perforce, by failing to protest and dispute the above findings, Respondent claims that the subject tax assessments have already become final, executory, and demandable. He continues that it is a well-established doctrine in taxation that an assessment whether valid or void shall become final, and executory when no administrative protest is filed within thirty (30) days from receipt of assessment. More so, Respondent insists that the subject assessments are valid and correct and Petitioner has the burden of proof to impugn its validity.

On the other hand, in its Comment, Petitioner alleges that Respondent's Motion is a *pro-forma*. There is nothing new raised in the motion and is in fact a mere repetition of arguments which were squarely addressed by the Court. Petitioner claims that the present motion violates Rule 37 Section 2 of the 1997 Rules of Civil Procedure for failure to point out specifically the findings or conclusions of the judgment that is supposedly not supported by evidence or which are contrary to law.

After due consideration, Respondent's Motion for Reconsideration is bereft of merit.

As correctly pointed out by petitioner, the arguments presented by Respondent in his Motion that the same have already been raised in his previous pleadings and are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

To reiterate, this Court stands by its finding that Respondent failed to discharge the burden of disproving Petitioner's claim that it did not receive the assessment notices since he failed to show that the registry return card was signed by Petitioner or her authorized representative. Also worth noting is that Respondent failed to present any certification from the Bureau of Posts stating that the said notices were indeed received by Petitioner.

While there is a presumption that a letter duly directed and mailed is received in the regular course of the mail,[1] such presumption is a disputable one. Our jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[2] Since Respondent failed to discharge the said burden, this Court cannot conclude that due process was properly observed in notifying Petitioner of the subject assessment notices.

As to the second ground, this Court maintains its ruling that since the examination and assessments were issued pursuant only by a LN, which was not replaced by a Letter of Authority (LOA), the same is invalid and, therefore, should be cancelled and/or withdrawn.

Accordingly, this Court finds no new or substantial matter, or compelling reason to justify the reversal or modification of the findings in the assailed Decision.

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[1] Section 3(v), Rule 131 of the Rules of Court.

[2] *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

WHEREFORE, in view of the foregoing, Respondent's Motion for Reconsideration (Re: Decision September 24, 2019) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice