Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case No. 0-619** For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended
-versus-	**Members:**
CROSS COUNTRY OIL & PETROLEUM CORP., ARTURO M. ZAPATA AND JACOB VALERIANO. Accused.	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** and **MANAHAN,** *J.J.*
	Promulgated: FEB 26 2018 1:00 p.m.

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RESOLUTION

For resolution is plaintiff's Motion for Reconsideration (Re: Resolution promulgated December 05, 2017), filed on December 20, 2017, with accused's Opposition (To Plaintiff's Motion for Reconsideration Dated 12 December 2017), filed on January 15, 2018.

In its Motion for Reconsideration, the prosecution prays for this Court to partially reverse its Resolution and to render a judgment ordering the accused to pay: (i) deficiency value-added tax for taxable year 2009 in the amount of P293,130,954.96; and (ii) penalties, surcharges, deficiency interest and delinquency interest until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997.

The dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, premises considered, the Demurrer to Evidence is hereby **GRANTED**. Accordingly, the instant CTA Criminal Case No. 0-619 is hereby **DISMISSED**.

SO ORDERED."

In the subject Motion, plaintiff raised this sole error allegedly committed by the Court:

> **THE HONORABLE COURT ERRED IN HOLDING THAT THE PROSECUTION FAILED TO ESTABLISH THAT THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) HAD BEEN ACTUALLY SERVED AND RECEIVED BY RESPONDENT CORPORATION OR BY ITS DULY AUTHORIZED REPRESENTATIVE.**

Plaintiff mainly argues that, assuming *arguendo* that plaintiff failed to establish receipt of the FDDA by respondent Corporation or by its duly authorized representative beyond reasonable doubt, it applies only to the criminal aspect of the case. As to the civil aspect, plaintiff believes that it was able to establish by preponderance of evidence the receipt by respondent Corporation or by its duly authorized representative of the subject FDDA.

By way of opposition, accused argues that the plaintiff failed to present proof of mailing and service of the Final Decision on Disputed Assessment to the accused; and, that the plaintiff failed to present evidence that there was a final and executory assessment of VAT.

The Court cannot subscribe to the foregoing arguments of the plaintiff.

We maintain our stand in the assailed Resolution that plaintiff failed to establish by proof beyond reasonable doubt, or even by preponderance of evidence, that the subject FDDA had been actually served and received by the respondent Corporation or by its duly authorized representative. Thus, the obligation to pay the said tax did not arise.

We, thus, quote hereunder the relevant portions of the assailed Resolution, to wit:

> "In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[1],

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[1] G.R. No. 157064, August 7, 2006.

citing the case of *Protector's Services, Inc. vs. Court of Appeals*[2], this Court ruled that when a mail matter is sent via registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court[3], that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In relation thereto, the Supreme Court, in the cases of *Jaime Alferez vs. People of the Philippines and Pingping Co.*[4] and *In the Matter of the Petition for Habeas Corpus of Benjamin Vergara, et al., vs. Hon. Francisco C. Gedorio, Jr., et al.*,[5] further stated that the receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.

It further stressed in the case of *Republic of the Philippines vs. Resins, Incorporated*[6], *citing the cases of Government of the Philippines v. Aballe*[7] *and Cruz v. Court of Appeals*[8], that '**it is the registry receipt issued by the mailing office <u>and</u> the affidavit of the person mailing, which proves service made through registered mail. Absent one or the other, or worse both, there is no proof of service.**

Here, both accused denied the receipt of the subject FDDA. Such denial, therefore, shifts the burden upon the plaintiff to prove that the FDDA was duly delivered and actually received by respondent Corporation.

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[2] G.R. No. 118176, April 12, 2000.

[3] Section 3(v), Rule 131, of the 1997 Rules of Court provides:

> Sec. 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail;

[4] G.R. No. 182301, January 31, 2011.

[5] G.R. No. 154037, April 30, 2003.

[6] G.R. No. 175891, January 12, 2010.

[7] G.R. No. 147212, March 24, 2006.

[8] 436 Phil. 641, 652 (2002).

To prove that the FDDA dated February 21, 2013 was sent, via registered mail, to the registered business address of respondent Corporation, it offered in evidence Registry Receipt No. 904559 dated February 21, 2013 and Registry Return Receipt, respectively.

While the foregoing evidence were positively identified by Mr. Marlon Josue B. Garong[9], OIC-Section Chief of the Administrative Division, Revenue Region No. 6 of BIR-Manila, the Court agrees with the observation of the accused that the Registry Return Receipt, marked as Exhibit 'P-22', is inconclusive to prove that the FDDA was in fact mailed to respondent Corporation on the ground that the same does not bear the Registry Receipt No. 904559, marked as 'Exhibit P-21'.

This is clear from the following testimony of Mr. Garong on cross-examination, to wit:

> 'ATTY. LIU:
> Q. Mr. Witness, except for the existing records in your case, you have no personal knowledge in the preparation of these documents, am I correct?
>
> MR. GARONG:
> A. Yes.
>
> ATTY. LIU:
> Q. Mr. Witness, you mentioned and you identified earlier Exhibit P-21 wherein you states that there are ten (10) letters sent to various taxpayers for mailing, am I correct?
>
> MR. GARONG:
> A. Yes, ma'am.
>
> ATTY. LIU:
> Q. You also mentioned that your only proof that it was in fact.... That the FDDA was in fact transmitted to the taxpayer, am I correct?
>
> MR. GARONG:

[9] Exhibit "P-51".

A. Yes.

ATTY. LIU:
Q. Mr. Witness, kindly go over Exhibit P-21, especially Registry Receipt No. 904559 and Exhibit P-22 where you stated in your Affidavit that this is your Registry Return Receipt?

MR. GARONG:
A. As per our record?

x x x x

MR. GARONG:
A. Yes.

x x x x

ATTY. LIU:
Q. Exhibit P-22, Registry Return Receipt, *blangko po ba ang nakalagay na* registered letter or parcel number?

x x x x

MR. GARONG:
A. *Wala pong nakasulat.*'[10] (Emphases ours)

The Court, likewise, observed that the plaintiff made no effort to either present the testimony/affidavit of the postman/postmaster or even a certification issued by the latter showing that the notice was duly issued and delivered to respondent Corporation. The plaintiff also failed to authenticate or identify the signature on the registry return card. Thus, the Court cannot ascertain if the name of the person appearing on the said return was the duly authorized representative of the respondent Corporation. The presentation of the said registered letter and the registry receipt, with an unauthenticated signature, therefore, do not meet the required proof beyond reasonable doubt that the respondent Corporation or the accused herein received such notice.

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[10] Pages 8-10, Transcript of Stenographic Notes Taken During the Hearing on August 30, 2017.

> In the same vein, the Court cannot ascertain the date of receipt of the subject FDDA since the portion of the date of delivery on the said Registry Return Receipt was not filled up. Plaintiff must prove the actual receipt of said FDDA because the fact of service provided for in the law is reckoned from receipt of such notice.
>
> We stress that, ordinarily, preponderance of evidence is sufficient to prove notice. But in criminal cases, the quantum of proof required is proof beyond reasonable doubt.[11] But based thereon, **the prosecution failed to establish that the FDDA had been actually served and received by respondent Corporation or by its duly authorized representative. Thus, the accused's right to due process in the issuance of the subject assessment was deemed violated. This leads to the conclusion that no valid assessment was issued. Consequently, there is no basis for the issuance of PCL, Warrant of Distraint and/or Levy and Warrants of Garnishment against the respondent Corporation."** (Emphases supplied)

Clearly, the absence of competent proof that the FDDA was duly sent to the taxpayer gives rise to the conclusion that the accused herein are under no obligation to pay the subject tax.

WHEREFORE, there being no compelling legal argument that will warrant the reversal of the assailed Resolution, plaintiff's Motion for Reconsideration (Re: Resolution promulgated December 05, 2017) is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[11] Victor Ting, et al., vs. Court of Appeals, et al., G.R. No. 140665, November 13, 2000.