Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Third Division

FEATI UNIVERSITY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8659

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 0 2 2018
2:37 p.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is respondent's **Motion for Reconsideration**, filed on December 27, 2017, with petitioner's **Comment/Opposition (Re: Oppositor's Motion for Reconsideration dated December 27, 2017 to the Honorable Court's Order dated January 8, 2018)**, filed on January 30, 2018.

Respondent seeks reconsideration of the Court's Decision dated December 5, 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessment against petitioner for deficiency VAT, deficiency EWT, and deficiency DST for fiscal year 2007 is **CANCELLED**.
>
> **SO ORDERED**."

Respondent alleges that the right to collect of the Bureau of Internal Revenue (BIR) is based on a valid assessment, which is final, executory and demandable, and which can no longer be disturbed.

According to respondent, petitioner did not file any administrative protest as prescribed under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, despite the service and receipt of the Final Assessment Notice (FAN) and the corresponding Formal Letter of Demand (FLD) with Details of Discrepancies. Thus, the subject tax assessment have become final, executory and demandable.

Respondent maintains that as a consequence of the FAN becoming final, executory and demandable, the case of petitioner was referred to the Collection Section of Revenue District Office No. 32 for enforcement of collection. However, the Court allegedly went too far and examined the validity of an undisputable assessment which have become final, executory and demandable.

Respondent claims that while petitioner denied having received the assessment notices and formal demand letters, respondent was able to prove that the same were received by petitioner in the regular course of mail through a certain Mr. Rommel Abella, its employee. Respondent avers that the facts to be proved in order to raise this presumption as set forth in Section 3(v), Rule 131 of the Rules of Court, such as (1) that the letter was properly addressed with postage prepaid and (2) that it was mailed, were substantially testified to by Mr. Armando Macatangay.

On the other hand, petitioner opposes the above allegations, and argues that the Supreme Court has consistently upheld the fundamental necessity of notices. Petitioner cites the case of *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*[1] where the Supreme Court held that the FAN never attained finality because the taxpayer never received it, either actually or constructively. The Supreme Court said that proceeding heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle that taxpayers should be able to present their case and adduce supporting evidence.

Petitioner claims that respondent failed to discharge the *onus probandi* establishing petitioner's receipt of the FAN. Petitioner further alleges that the registry receipt containing the signature of a certain Rommel Abella is inconsequential since he had no authority to receive the FAN.

Petitioner also points out that in this case, the letter was not properly addressed because the same was addressed only to petitioner Feati University, Inc., without referring to, or putting it to the attention of, any actual person.

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[1] G.R. No. 193100, December 10, 2014.

A scrutiny of the foregoing allegations shows that they had been substantially considered and addressed in the assailed Decision. In fact, the arguments in respondent's motion are the same as the averments interposed in his Memorandum[2] filed on November 21, 2016.

The Court agrees with respondent that he had sufficiently established the presumption that the FAN and FLD were properly mailed and that the same were received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. However, it must also be highlighted that the same is merely a disputable presumption.

As aptly cited in the assailed Decision, in the case of *Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc.*,[3] and *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[4], the Supreme Court held that **a direct denial of the receipt** of the mail **shifts the burden** upon the party favored by the presumption to prove that the mailed letter was **indeed received by the addressee**.

Based on the evidence presented, there is a direct denial of the receipt of the mailed FAN and FLD in this case. Thus, the said denial shifts the burden upon respondent to prove that the mailed letter was indeed received by petitioner.

To reiterate, it is a requirement of due process that the taxpayer must **actually receive the assessment**.[5]

However, in this case, respondent failed to establish by sufficient evidence that the FAN was indeed received by petitioner.

Considering the foregoing, there is no basis for the Court to sustain respondent's allegation that the FAN dated June 29, 2011 already attained finality for failure to protest the same since petitioner cannot be expected to protest the FAN without first being properly informed of the basis of its tax liabilities.

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[2] Docket, vol. IV, pp. 3083-3096.

[3] G.R. No. L-38540, April 30, 1987.

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

[5] *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*, G.R. No. 155541, January 27, 2004.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice