REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

NEXT MOBILE, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8670

Members:
BAUTISTA, Chairperson,
FABON-VICTORINO, and
RINGPIS-LIBAN, JJ.

Promulgated:
NOV 2 5 2016
3:00 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's Motion for Reconsideration (Re: Decision dated 07 September 2016) filed on September 22, 2016 with petitioner's Comment/Opposition (On Respondent's Motion for Reconsideration dated 20 September 2016) filed on October 21, 2016.

On August 10, 2016, the Court promulgated a Decision (the "Assailed Decision") cancelling and withdrawing the assessments for deficiency income tax and value-added tax ("VAT") issued against petitioner for calendar year ("CY") 2008 in the total amount of Php68,678,397.39, inclusive of interest and compromise penalty. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments covering income tax and value-added tax for calendar year 2008 in the total amount of Php68,678,397.39, inclusive of interest and compromise penalty, are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**.

In his Motion for Reconsideration, respondent argues that petitioner was validly served with copies of the Preliminary Assessment Notice ("PAN") and the Final Assessment Notice ("FAN"). Respondent insists that aside from petitioner's mere denial of receipt of the PAN and the FAN, petitioner did not present any evidence to prove its non-receipt of the assessment notices. Thus, the PAN and the FAN are presumed to have been duly directed, mailed, and received by petitioner in the regular course of mail in the absence of evidence to the contrary. Respondent further posits that a taxpayer need not actually receive an assessment for the same to be valid. In the event a taxpayer transfers from its registered address without the Bureau of Internal Revenue's ("BIR") permission, the taxpayer will obviously not receive the assessment. Accordingly, *Revenue Regulations No. 12-99*[1] allows service by registered mail. Respondent also argues that the assessments have factual and legal bases, and that they have become final and demandable.

On the other hand, in its Comment/Opposition, petitioner counters that respondent deprived petitioner of its right to due process as petitioner never received the PAN and the Formal Letter of Demand ("FLD"), and respondent issued the FLD less than fifteen days from the date the PAN was allegedly sent by registered mail. Petitioner also contends that the assessments prescribed because petitioner did not receive the FLD, and that the assessments did not become final and executory.

After a careful review of the grounds raised in the Motion for Reconsideration and the corresponding Comment/Opposition thereto, the Court finds no new matters or arguments which were not considered in the Assailed Decision. Respondent failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Consequently, the Court finds the Motion for Reconsideration devoid of merit. Nevertheless, the Court will expound on some of the issues raised, if only to reinforce the discussion in the Assailed Decision.

Respondent's argument that a taxpayer need not actually receive the assessment for the same to be valid is unmeritorious. In support of its position, respondent contends that a taxpayer who changes its

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[1] September 6, 1999.

business address without notifying the BIR will not receive an assessment issued against it, but this fact does not invalidate the assessment.

The Court disagrees. Common sense dictates that a taxpayer who changes its business address without notice to the BIR will not receive an assessment issued against such taxpayer, especially when the same is sent by registered mail. In such instance, the presumption that the same was received by the taxpayer in the ordinary course of mail holds; the assessment is valid notwithstanding the taxpayer did not receive the same.

Contrary to respondent's position, however, the presumption of constructive receipt cannot be applied to the present case considering petitioner never transferred its business address.[2] Having remained at its registered business address, petitioner should actually receive the assessment - whether personally or by registered mail - for the same to be valid. In view of petitioner's denial of having received the assessments, the burden is on respondent to prove that petitioner actually received the same.[3] Consequently, respondent's insistence that petitioner has the burden of proving petitioner did not receive the assessments is erroneous.

In the recent case of *Commissioner of Internal Revenue ("CIR") v. GJM Philippines Manufacturing, Inc.*[4], the Supreme Court emphasized that the burden of proving receipt of the assessment is shifted to respondent if the taxpayer denies having received the same. Respondent's failure to establish, by competent evidence, the taxpayer's receipt of the assessment leads to the conclusion that no such assessment was made. The Supreme Court held:

> <u>If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee</u>. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the

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[2] *Records, Vol. 1, Exhibit "P-68,"* Q&A No. 13, p. 977.
[3] *CIR v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016; *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126.
[4] G.R. No. 202695, February 29, 2016.

addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.

To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. <u>The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing</u>. <u>While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved</u>. <u>Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice</u>. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.

<u>The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued</u>. Consequently, the government's right to issue an assessment for the said period has already prescribed. The CIR offered in evidence Transmittal Letter No. 282 dated April 14, 2003 prepared and signed by one Ma. Nieva A. Guerrero, as Chief of the Assessment Division of BIR Revenue Region No. 8-Makati, to show that the FAN was actually served upon GJM. However, it never presented Guerrero to testify on said letter, considering that GJM vehemently denied receiving the subject FAN and the Details of Discrepancies. Also, the CIR presented the Certification signed by the Postmaster of Rosario, Cavite, Nicarter Looc, which supposedly proves the fact of mailing of the FAN and Details of Discrepancy. It also adduced evidence of mail envelopes stamped February 17, 2003 and April 14, 2003, which were meant to prove that, on said dates, the Preliminary Assessment Notice (PAN) and the FAN were delivered, respectively. Said envelopes also indicate that they were posted from the Makati Central Post Office. However, according to the Postmaster's Certification, of all the mail matters addressed to GJM which were received by the Cavite Post Office from February 12, 2003 to September 9, 2003, only two (2) came from the Makati Central Post Office. These two (2) were received by the Cavite Post Office on February 12, 2003

> and May 13, 2003. But the registered mail could not have been the PAN since the latter was mailed only on February 17, 2003, and the FAN, although mailed on April 14, 2003, was not proven to be the mail received on May 13, 2003. The CIR likewise failed to show that said mail matters received indeed came from it. It could have simply presented the registry receipt or the registry return card accompanying the envelope purportedly containing the assessment notice, but it offered no explanation why it failed to do so. Hence, the CTA aptly ruled that the CIR failed to discharge its duty to present any evidence to show that GJM indeed received the FAN sent through registered mail on April 14, 2003.[5]

Similar to the taxpayer in the *GJM Philippines Manufacturing, Inc.* case, petitioner denied having received the assessments issued against it. Meanwhile, respondent failed to prove by substantial evidence that the assessments were actually received by petitioner. The statements made by respondent's witness, Mr. Armando C. Macatangay[6], to the effect that respondent has no evidence that petitioner actually received the assessments is especially damning. Respondent's failure to prove petitioner's actual receipt of the assessments thus leads to the conclusion that no assessment was issued against petitioner.

Accordingly, the Court maintains that the assessments against petitioner for deficiency income tax and VAT for CY 2008 should be cancelled and withdrawn.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 07 September 2016) is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[5] *CIR v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016; underscoring ours.
[6] *Transcript of Stenographic Notes, December 4, 2014*, pp. 16-17.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO	**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice	Associate Justice