REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

BARRIO FIESTA MANUFACTURING CORPORATION,
Respondent.

CTA EB NO. 2186
(CTA Case No. 9880)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 0 4 2022 3:10 pm

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

At bar is petitioner Commissioner of Internal Revenue's (**petitioner**'s) "Motion for Reconsideration (Notice of Decision promulgated June 21, 2021)"[1] (**MR**) filed on 22 July 2021. He seeks the reversal of this Court's Decision[2] dated 21 June 2021 (**assailed Decision**) on the above-captioned case. On 25 October 2021, respondent Barrio Fiesta Manufacturing Corporation (**respondent**) filed its "Comment/Opposition"[3] thereto. The dispositive portion of the assailed Decision reads:

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1 *Rollo*, pp. 107-112.
2 Id., pp. 83-94.
3 Id., pp.140-152.

> ...
>
> **WHEREFORE**, with the foregoing premises, the Petition for Review filed by petitioner Commissioner of Internal Revenue on 12 December 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 18 September 2019 and 05 November 2019, respectively, of the First Division in CTA Case No. 9880, entitled *Barrio Fiesta Manufacturing Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.
>
> ...

To recall, the Court in Division declared petitioner in default in CTA Case No. 9880. As a result, the Court in Division rendered a decision declaring petitioner's assessment of respondent void due to the former's failure to present any evidence of the Preliminary Assessment Notice (**PAN**) and Final Assessment Notice's (**FAN**'s) service to controvert the latter's denial of receipt thereof.

In the MR, petitioner argues that, despite lack of proof of proper service of the subject documents, there stands a presumption of regularity in the performance of his functions. He further contends that his failure to timely file an Urgent Motion to File/Admit Verified Answer with Leave of Court and to Suspend Proceedings[4] (**Motion to Admit**) could be considered as excusable negligence and that he should be allowed to present his case pursuant to the Supreme Court's ruling in *Momarco Import Company, Inc. v. Felicidad Villamena*[5] (**Momarco**).

As expected, respondent, in its Comment/Opposition, completely agrees with this Court's assailed Decision. It maintains the invalidity of the Bureau of Internal Revenues (**BIR**'s) assessment due to its failure to submit proof of service of the subject notices.

Petitioner assigns a single error to the Court in Division to support the present motion. Petitioner claims that the Court in Division erred in denying its Petition for Review[6] on the ground of its failure to prove the service of the PAN and FAN when it had already issued a Warrant of Distraint and Levy (**WDL**) against respondent.

We resolve.

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4 Division Docket, pp. 433-436.
5 G.R. No. 192477, 27 July 2016.
6 Filed on 12 December 2019, *Rollo*, pp. 4-11.

After a careful review of petitioner's arguments, We remain unconvinced.

Petitioner's arguments are a mere rehash of its previous arguments which this Court had already passed upon and resolved.

As the Court explained in the assailed Decision, the presumption of regularity in the performance of petitioner's functions is disputable. Upon respondent's denial of the subject notices' receipt, it was incumbent on petitioner to prove that the same were actually received by its proper addressee. Thus, We held:

> ...
>
> We echo the First Division's sentiment that although respondent's blanket denial of the PAN and the FAN's receipt may not be well-taken; the denial, nevertheless, behooves petitioner to prove respondent's actual receipt of the same. In *Republic of the Philippines v. The Court of Appeals, et al.* (**Republic**), the Supreme Court explains thusly:
>
> > ...
> > ...[W]hile the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still, this is 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...
> > ...
>
> To give rise to the foregoing presumption of receipt, the Supreme Court in *Gonzalo P. Nava v. Commissioner of Internal Revenue* (**Nava**) held that there must first be satisfaction of the following requirements:
>
> > ...
> > The facts to be proved to raise this presumption are (a) that the letter was *properly addressed* with postage prepaid, and (b) that it was *mailed*. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie." (VI, Moran, Comments on the Rules of Court, 1963 ed., 56-57; citing Enriquez vs. Sun Life Assurance of Canada, 41 Phil. 269)
> > ...
>
> Recent jurisprudence remains faithful to the foregoing principles such as in the much later case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc. v.*

> *Commissioner of Internal Revenue* (**Barcelon**) where the FAN's receipt was also denied by the taxpayer.
>
> As culled from the case records, petitioner was held in default for failing to file his Answer within the time prescribed by the Court. As a result, he was unable to submit proof to negate respondent's denial of the subject notices' receipt. Following the doctrines laid down in *Republic* and *Nava,* it becomes clear that petitioner failed to discharge his burden of proof.
>
> In petitioner's defense, he contends that the WDL's issuance is evidence in itself of the previous issuance of the subject notices. Similar to the presumption that a letter is received in the ordinary course of mail, regularity in the exercise of petitioner's functions is likewise a mere disputable presumption. Respondent, in denying receipt of the subject notices, also puts this presumption up for debate.[7]
>
> ...

As regards petitioner's insistence that the Court in Division's declaration of default against him was improper, it would appear that petitioner's reliance on *Momarco* is misplaced.

In *Momarco,* although the Supreme Court expressed its sentiments against default judgments, it nevertheless upheld the declaration of default against the petitioner therein. The Supreme Court explains, thusly:

> ...
>
> In implementation of the policy against defaults, the courts have admitted answers filed beyond the reglementary periods but before the declaration of default.
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> Considering that the petitioner was not yet declared in default when it filed the answer on September 10, 1998, should not its answer have been admitted?
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> ...
>
> We concur with the CA's justification. The RTC and the CA acted in accordance with the Rules of Court and the pertinent jurisprudence. The petitioner was insincere in assailing the default judgment, and its insincerity became manifest from its failure to move for the lifting of the order of default prior to the rendition of the default judgment. The CA rightly observed that the petitioner had apparently forsaken its "expeditious remedy" of moving soonest for the lifting of the order of default in favor of "wager[ing]" on obtaining a favorable judgment. The petitioner would not do so unless it

[7] Citations omitted, emphasis and italics in the original text.

> intended to unduly cause delay to the detriment and prejudice of the respondent.[8]
>
> ...

From the foregoing, it is clear that the policy of admitting belated answers would heavily be hinged on petitioner's sincerity in pursuing his case. Records would show that much like the petitioner in *Momarco*, petitioner did not bother to have the declaration of default against him lifted. In addition to such failure, petitioner also failed to file an opposition to the following submissions of respondent: (**1**) Urgent Motion to Suspend the Collection of Tax[9]; (**2**) Urgent Motion to Lift Garnishment and Dispense with the Payment of the Bond[10]; and, (**3**) Formal Offer of Evidence[11] (**FOE**).

Given the circumstances herein, it would appear that petitioner utterly failed in actively participating in the proceedings before the Court in Division in CTA Case No. 9880. That being the case, the Court *En Banc* does not see that petitioner was genuinely earnest or interested in his own case to now excuse his lapses and inattentiveness.

WHEREFORE, the foregoing premises considered, petitioner's Motion for Reconsideration (Notice of Decision promulgated June 21, 2021) filed on 22 July 2021 is **DENIED** for lack of merit. Accordingly, the Court's Decision dated 21 June 2021 is **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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8 Citation omitted.
9 Division Docket., pp. 12-34.
10 Id., pp. 51-60.
11 Id., pp. 272-282.

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

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice