REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

MINDANAO SANITARIUM AND HOSPITAL INC., Petitioner,	**CTA Case No. 8927**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 20 2018 : 9:07 a.m.

x - x

RESOLUTION

UY, J.:

For resolution is respondent's **"MOTION FOR RECONSIDERATION Re: Decision dated September 15, 2017"** filed on October 4, 2017, with petitioner's **"COMMENT (On Respondent's Motion for Reconsideration)"** filed on November 2, 2017, seeking the reconsideration and setting aside of this Court's Decision dated September 15, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency income tax assessment in the total amount of P2,469,652.51 for taxable year 2010 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

In respondent's *Motion*, respondent argues that a review of the BIR records as well as the testimony of witness, Revenue Officer II Tomianong Galo shows that indeed a Preliminary Assessment Notice (PAN) dated February 19, 2014 was issued to petitioner. According to respondent, the PAN was sent via LIBCAP Super Express No. 17766845 and delivered and received by Mr. JC Asoy on February 22, 2014.

Allegedly, the bare denial of petitioner will not shift the burden to respondent. Additionally, respondent states that bare denial, unsupported by evidence could never overcome the presumption that the revenue officers faithfully performed their official duty.

On the other hand, petitioner argues that respondent's witness, RO II Galo offered no proof that he was actually involved in the mailing, let alone the delivery of the PAN. Petitioner submits that RO II Galo is incompetent to testify on the service of the PAN. Moreover, petitioner cited the case *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[1] which held 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."

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

The PAN was not duly served upon petitioner.

Contrary to respondent's claim, the records of the case, as well as the testimony of RO II Galo, fails to convince this Court that the PAN was duly received by petitioner.

As mentioned in the assailed Decision, a perusal of the records of this case reveals that respondent failed to present the required server's written report, and the corresponding official receipt issued by LIBCAP Super Express. And even assuming that the PAN was sent through LIBCAP Super Express, respondent failed to prove that the PAN was actually received by petitioner. Respondent was not

---

[1] G.R. No. 185371, December 8, 2010.

able to establish that the certain "JC Asoy" was authorized to receive the PAN for and on behalf of petitioner.

Moreover, there was no indication in the testimony of RO II Galo that he has personal knowledge on the actual mailing of the PAN.[2]

Accordingly, there is no merit in respondent's assertion that the PAN was duly issued to petitioner,

Respondent has the burden to prove that the PAN was duly received by petitioner.

Respondent argues that the bare denial of petitioner will not shift the burden to respondent. As such, respondent insists that mere denial, unsupported by evidence could never overcome the presumption that the revenue officers faithfully performed their official duty.

We disagree.

Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[3] Considering that it is respondent who asserts that the PAN was sent to petitioner, he therefore bears the burden of proving the same.

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.[4] The presumption of regularity is qualified by said jurisprudence, and thus, the burden of proof was shifted to respondent.

---

[2] Judicial Affidavit of Tomianong Galo, Exhibits "R-11" and "R-11-a", Docket, pp. 97 to 102.

[3] *MOF Company, Inc. vs. Shin Yang Brokerage Corporation,* G.R. No. 172822, December 18, 2009. See also *Morales vs. Skills International Company,* G.R. No. 149285, August 30, 2006.

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

Correspondingly, it is respondent who bears the burden of proving, by competent evidence, that the PAN was indeed received by petitioner.

We therefore reiterate Our findings in the assailed Decision with respect to the irregularities in the mailing and service of the PAN:

1. Respondent failed to present the required server's written report, and the corresponding official receipt issued by LIBCAP Super Express;

2. There is no showing that the server of the subject PAN accomplished the bottom portion thereof; [5]

3. There was no indication in the testimony of RO II Galo that he has personal knowledge on the actual mailing of the PAN;[6]

4. The Court cannot give probative value to the photocopy of LIBCAP Delivery Manifest dated February 22, 2014, found in the BIR records; [7]

5. The LIBCAP Delivery Manifest does not provide in detail what was actually delivered to petitioner. It merely shows that a package was delivered to petitioner which was received by a certain JC Asoy on February 22, 2014, without any clear indication that the package delivered is the subject PAN. Moreover, nowhere in the same delivery manifest does it show that it was respondent who actually sent the package to petitioner; and

6. Respondent was not able to establish that the certain JC Asoy was authorized to receive the PAN for and on behalf of petitioner.

Clearly from the foregoing irregularities, respondent failed to discharge the burden of establishing that the PAN was indeed received by petitioner.

Finding no compelling reason to reconsider, modify or reverse the assailed Decision, We reiterate Our ruling that no competent evidence whatsoever was presented by respondent to prove actual

---

[5] Exhibit "R-8", BIR Records, pp. 246 to 247.
[6] Judicial Affidavit of Tomianong Galo, Exhibits "R-11" and "R-11-a", Docket, pp. 97 to 102.
[7] BIR Records, p. 260.

receipt of the PAN. As such, petitioner has been denied of its right to due process. Accordingly, the assessment in this case is a nullity.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice