REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MANNASOFT TECHNOLOGY CORPORATION, *Petitioner,*	**CTA CASE NO. 8745**
	Members: *Bautista, Chairperson* *Fabon-Victorino, and* *Ringpis-Liban, JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 16 2017 2:40 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution are:

1. Respondent's Motion for Reconsideration ("MR") filed by registered mail on February 9, 2017; and

2. Petitioner's Motion to Admit (Opposition/Comment) ("Motion to Admit"), with annexed Opposition/Comment ("Comment"), filed on March 3, 2017.

On January 13, 2017, the Court rendered a Decision, the dispositive portion thereof reads as follows:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php13,475,472.84, for value-added tax in the amount of Php57,102,109.92, and for expanded withholding tax in the amount of Php8,212,654.77, all inclusive of interest, surcharges, and penalties for calendar year

2008; and the Warrant of Distraint and/or Levy; are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

The Court found that it has jurisdiction over the present case under the term "other matters," pursuant to *Section 7(a)(1) of Republic Act ("RA") No. 1125* and *Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*; and that the assessments made against petitioner are void for failure to comply with due process, and are not yet final, executory, and demandable. Records reveal that the Decision was received by respondent on January 25, 2017. Therefore, under *Section 1, Rule 15 of the RRCTA*, respondent had fifteen (15) days or until February 9, 2017 to file his MR.

On February 23, 2017, the Court received respondent's MR, which was timely filed by registered mail on February 9, 2017. Respondent claims that the Petition for Review was filed out of time for failure of petitioner to appeal the Warrant of Distraint and Levy ("WDL") within the period provided by law; that petitioner is estopped from assailing the authority of the person who received the Notice of Informal Conference ("NIC"), the Preliminary Assessment Notice ("PAN") and the Final Assessment Notice ("FAN"), as it was never raised in the administrative level; and that the receptionist and the security guard are considered within the scope of persons with sufficient discretion to receive papers on behalf of their employer.

On February 28, 2017, the Court ordered petitioner to file its comment on respondent's MR within ten (10) days from notice.

On March 3, 2017, petitioner filed its Motion to Admit stating that it received respondent's MR on February 20, 2017; that under the *RRCTA*, it has ten (10) days from receipt of the MR or until March 2, 2017 to file a comment; that while the draft comment was already prepared, petitioner's counsel was unable to finalize and file the same since she was attending to her sick mother and that no other available lawyer can assist, leaving her with no recourse but to file the Motion to Admit and Comment at the soonest available time; and that petitioner's counsel humbly begs the indulgence of the Court to admit the attached Comment.

The Court notes that it was only on February 28, 2017 when it issued an order directed to petitioner to file a comment. Even under the assumption that petitioner received the order on February 28, 2017, petitioner still had ten (10) days therefrom or until March 10, 2017 to file its comment. Therefore, the Comment attached to the Motion to Admit was timely filed.

Acting on petitioner's Motion to Admit, the same is hereby **GRANTED**. Accordingly, the attached Comment is hereby **ADMITTED**.

In petitioner's Comment, it counters that the Decision of the Court is amply supported by the facts of the case, and by law and jurisprudence; that respondent has not shown any justifiable reason for the Court to grant the MR; that the Petition for Review was filed on time; that the Court has jurisdiction over the subject matter; that the assessments never attained finality due to respondent's violation of due process; that respondent failed to discharge the burden to prove that the notices were served in accordance with law and that the person receiving the same has authority to do so; and that sufficiency of discretion is not the legal standard but the authority of the person receiving the assessments and notices.

The Court shall now resolve respondent's MR.

After a careful consideration of the MR filed by respondent, the Court finds that the issues and arguments raised therein are the same ones raised in his Answer (considering that respondent failed to file his Memorandum), and have been sufficiently passed upon and discussed in the assailed Decision. For reference, below are respondent's arguments in his Answer, as summarized in the assailed Decision:

> ***Respondent's Counter-Arguments***
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> Respondent argues that the assessments were made and issued in accordance with the law, rules and regulations; and, that the assessments were issued within the prescriptive period allowed by law.
>
> Respondent avers that the FDDA should be the decision appealable to the Court, thus, the Court has no jurisdiction to

take cognizance of the case since the Petition for Review was filed out of time.

Nonetheless, the Court shall address, in passing, some of the errors raised by respondent.

As to the issue of jurisdiction, the Court finds no cogent reason to reverse its finding that it has jurisdiction over the case. As amply discussed in the assailed Decision, the primordial issue in this case is the validity of the issuance of the assessment, and whether the same may be collected on through a WDL. The term "other matters" in *Section 3(a)(1), Rule 4 of the RRCTA* in relation to *Section 7(a)(1) of RA No. 1125* may include the determination of the validity of a WDL issued by the CIR.[1] Considering that petitioner's protest was only denied on November 25, 2013, it is justifiable on its part to file the present Petition for Review thirty (30) days from receipt thereof.

With regard to the pronouncement of the Court that there was violation of due process, it is elementary that a taxpayer must actually receive an assessment issued by the BIR in order for the same to be valid.[2]

It is undisputed that the FAN was served by personal delivery. However, said delivery does not comply with the due process requirements under *Section 3.1.4 of RR No. 12-99, viz.:*

> 3.1.4 Formal Letter of Demand and Assessment Notice. - <u>The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative</u>. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void...<u>The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt</u>

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[1] *Philippine Journalists, Inc. v. CIR,* G.R. No. 162852, December 16, 2004, 447 SCRA 214; *CIR v. Abundance Providers and Entrepreneurs Corporation,* CTA *EB* No. 999 (CTA Case No. 8040), August 18, 2014.

[2] *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; *Pundanera v. CIR,* CTA Case No. 8333, December 2, 2014; *Palaganas v. CIR,* CTA Case No. 8394, September 17, 2014; *Coolmate Corporation v. CIR,* CTA Case No. 8264, May 19, 2014.

> thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.[3]

The above provides that should the FAN be sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt in a duplicate copy, with the following details: *(1)* name; *(2)* signature; *(3)* designation and authority to act for and in behalf of the taxpayer, if not received by the taxpayer himself; and *(4)* date of receipt.

Looking into the BIR Records, the FAN[4] has a stamp which provides the name, signature, designation and date of receipt. However, the authority to act on behalf of the taxpayer is wanting, to wit:

> RECEIVED BY:
> (SGD.)
> ANGELO PINEDA
> (SIGNATURE OVER PRINTED NAME)
> DESIGNATION : RECEPTION
> DATE : 11/17/11
> CONTACT NO. : 813-41-62

As stated in the assailed Decision, the FAN was received by a certain "Mr. Angelo Pineda," who has no authority to receive the FAN since he is not an employee of petitioner. He is a reliever security guard assigned by Bravo Prime Security Services, a security agency. In fact, a Certification[5] was issued by Bravo Prime Security Services stating that Mr. Angelo Pineda was its employee and was assigned as a security guard from April 2011 to April 2013. Therefore, the person who received the FAN is not authorized to receive the same for he is not an employee of petitioner.

As stated in the assailed Decision, the fact that petitioner was able to protest the FAN does not cure respondent's violation of petitioner's right to due process. It is a requirement in all democratic regimes that the power of taxation be exercised reasonably and in

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[3] Underscoring ours.
[4] *BIR Records, Exhibit "R-8," Assessment Notice,* p. 408.
[5] *Petitioner's FOE, Folder 2, Exhibit "P-23."*

accordance with the prescribed procedure.[6] Otherwise, the taxpayer has a right to complain and the courts will then come to his/her/its succor.[7]

Therefore, the BIR was short of the diligence required in ensuring the proper service of the assessment. Let it be stressed that the law, regulations and jurisprudence require service upon the taxpayer or at least, upon its agent, and not upon any other person. To consider the receipt of the assessment by another person as deemed receipt by the taxpayer itself, despite the lack of prior verification of the former's authority or agency, will put taxpayers in a disadvantageous position and at the mercy of revenue officers.

WHEREFORE, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[6] *CIR v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; citing *CIR v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 158 SCRA 9.
[7] *Id.*