REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RONALDO STA. MARIA MANALO RS MANALO ENTERPRISES,
Accused.

CTA Crim. Case No. O-1027

For: Violation of Section 255 of RA 8424

Members:

DEL ROSARIO, ***P.J.***, *Chairperson*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

JUL 18 2023 2:35PM

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RESOLUTION

This resolves the following:

(i) Formal Entry of Appearance filed by the [special] prosecutors on June 20, 2023; and,

(ii) Plaintiff's Motion for Reconsideration filed on June 20, 2023.

The Court notes the Formal Entry of Appearance of Attys. Ramon B. Lorenzo; Rowell B. Vicente; Myrna R. Santelices; Norhaisah A. Calbe; Atreja Rei B. Alvarez; and, Maureen Anne B. Medina as [special] prosecutors under the supervision and control of the Public Prosecutor.

Anent the Motion for Reconsideration, plaintiff seeks to set aside the Resolution of this Court promulgated on May 26, 2023 (assailed Resolution), which dismissed the Amended Information for lack of probable cause as the prosecution failed to submit any proof of receipt of the Formal Letter of Demand (FLD) and Assessment Notice (AN). The dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, premises considered, the Amended Information filed on March 22, 2023, is hereby **DISMISSED**.

SO ORDERED."

Plaintiff raises the following arguments in support of the present Motion:

(1) Based on Section 3.1.7 of Revenue Regulation (RR) No. 12-99, assessment notice may be served through registered mail, and if no response is received from the taxpayer, the same shall be considered actually or constructively received;

(2) The presumption that a letter duly directed and mailed was received in the regular course of mail applies to this case;

(3) The Preliminary Assessment Notice (PAN) and AN were issued to and served upon the accused through registered mail and licensed courier in compliance with RR No. 18-2013;

(4) Accused received the PAN and AN considering that, based on records, the same were not returned to the sender;

(5) The disputable presumption under Section 3(v) of Rule 131 of the Rules of Court is satisfactory if uncontroverted and not overcome by contrary evidence. Accused did not controvert nor deny receipt of the PAN and AN;

(6) The shifting of burden to prove receipt of assessment [notice], in case of denial of receipt, should not be made applicable to tax cases; otherwise, it would be a convenient excuse to defeat taxes by simply making a general denial of receipt of assessment notices. More than mere denial, evidence should be presented to prove that the assessment notices were not received by the taxpayer; and,

(7) The PAN and AN sent to accused's registered address are considered deemed served as there is no showing in the Records that accused gave any written notice to the Revenue District Office having jurisdiction over his new business address.

Plaintiff's Motion for Reconsideration is bereft of merit.

Considering that plaintiff, in its Motion for Reconsideration, still failed to show the Court that the FLD and AN had actually been received by the taxpayer, and that, despite demand, the taxpayer willfully refused to pay the alleged deficiency tax liabilities, the Court finds no probable cause to issue a warrant of arrest against the accused.

To reiterate, **the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.**[1]

Otherwise stated, absent any proof that the final notice and demand for payment was **actually received** by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the assessment, no violation of the National Internal Revenue Code of 1997, as amended, has yet been committed. Interestingly, there is even nothing in Registry Receipt Nos. RE 458603385ZZ and RE 554955605ZZ (purportedly showing that the PAN and FAN, respectively, were sent to accused) that show either the name of the addressee or the latter's address.

WHEREFORE, premises considered, the Formal Entry of Appearance is **NOTED**. Accordingly, all pleadings, notices, orders, and resolutions of this Court in relation to the case shall be addressed to Attys. Ramon B. Lorenzo; Rowell B. Vicente; Myrna R. Santelices; Norhaisah A. Calbe; Atreja Rei B. Alvarez; and, Maureen Anne B. Medina, at 5th Floor, Legal Division, BIR Bldg. I, Solana Street corner Beaterio Street, Intramuros, Manila.

Plaintiff's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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

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[1] *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*, G.R. No. L-48134-37, October 18, 1990.