REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

YUSEN LOGISTICS CENTER, INC.,
Respondent.

CTA EB No. 1953
(CTA Case No. 9109)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:
JUN 26 2020
3:43 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

This resolves petitioner's Motion for Reconsideration (Re: Decision dated 9 December 2019) filed on January 2, 2020. On January 20, 2020, respondent filed its Opposition (to the Petitioner's Motion for Reconsideration Re: Decision dated 09 December 2019). On January 28, 2020, the Court required respondent to submit additional copies of the said Opposition. On February 7, 2020, the Court noted respondent's Compliance. This motion was submitted for resolution on February 24, 2020.

The dispositive portion of the December 9, 2019 Decision states:

> **WHEREFORE,** premises considered, the present Petition for Review filed by the Commissioner of Internal Revenue is **DENIED.** Accordingly, the April 26, 2018

Decision and the October 2, 2018 Resolution of the then CTA Third Division in CTA Case No. 9109 are **AFFIRMED.**

SO ORDERED.

The following are the grounds for the motion:

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN MAINTAINING THAT IT HAS JURISDICTION OVER THE ORIGINAL PETITION SINCE THE ASSESSMENT AGAINST RESPONDENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN REQUIRING PETITIONER TO PROVE ACTUAL RECEIPT OF THE ASSESSMENT NOTICES BY RESPONDENT

WHILE MAINTAINING THAT THE HONORABLE COURT HAS NO JURISDICTION OVER THE ORIGINAL PETITION, THE HONORABLE COURT ERRED IN DECLARING THE ASSESSMENTS VOID FOR ALLEGED FAILURE ON THE PART OF PETITIONER TO PROVE SERVICE THEREOF TO RESPONDENT

WHILE MAINTAINING THAT THE HONORABLE COURT HAS NO JURISDICTION OVER THE ORIGINAL PETITION, THE HONORABLE COURT ERRED IN RULING THAT THE DEFICIENCY TAX ASSESSMENT AGAINST RESPONDENT HAS ALREADY PRESCRIBED

After a careful review of the grounds raised and arguments presented by petitioner, this Court finds that these are mere reiteration, and that no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated December 9, 2019, thus, the motion is denied.

It is worthy to mention that the case filed before the CTA Division was for the nullification of the Warrant of Distraint and/or Levy (WDL) issued by then respondent (now petitioner). This Court emphasizes that it has jurisdiction over "other matters arising under the National Internal

Revenue Code or other laws administered by the Bureau of Internal Revenue."[1]

This Court reiterates that in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.,*[2] citing *CIR v. Metro Star Superama, Inc.,*[3] the Supreme Court ruled that, "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. xxx xxx xxx It has been settled that while a mailed letter is deemed received by the 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." In this case, petitioner failed to prove the receipt of the Final Assessment Notice (FAN) by respondent.

In the consolidated cases of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,*[4] and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,*[5] the Supreme Court explicitly stated that, "Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99,[6] provides certain procedures to ensure that the right of the taxpayer to procedural due process is observed in tax assessments, thus:

xxx xxx xxx

> **The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable.** Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. xxx xxx xxx
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> **The use of the word 'shall'** in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is *Je*

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[1] Sections 7(a) (1) and a(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282.
[2] G.R. No. 202695, February 29, 2016.
[3] G.R. no. 185371, December 8, 2010.
[4] G.R. Nos. 201398-99, October 3, 2018.
[5] G.R. Nos. 201418-19, October 3, 2018.
[6] RR No. 12-99, was later on amended by RR No.18- 2013. RR 18-2013 deleted the requirement of Notice of Informal Conference in RR 12-99 but RR 7-2018 reinstated the requirement.

> **mandatory.** This is an **essential requirement of due process and applies to** the Preliminary Assessment Notice, **Final Letter of Demand with the Final Assessment Notices,** and the Final Decision on Disputed Assessment.
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> On **the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.** xxx xxx xxx Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. **After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.**" *(Emphases Supplied).*

We emphasize that, "Tax assessments issued in violation of the due process rights of a taxpayer are null and void."[7]

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 9 December 2019) is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[7] *Consolidated cases of Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,* G.R. Nos. 201398-99, October 3, 2018, *and Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 201418-19, October 3, 2018.

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice