REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GATEWAY RURAL BANK, INC., Petitioner,	**CTA CASE NO. 9547**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 13 2021

x - x
2:10 p.m.

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration** filed on July 2, 2021, with petitioner's **Comment/Opposition (to the *Motion for Reconsideration* dated 30 June 2021)** filed on July 19, 2021.

On June 22, 2021, the Court promulgated a Decision cancelling and setting aside respondent's deficiency income tax assessment for taxable year 2012, for violating petitioner's right to due process of law, the dispositive portion of which reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject the deficiency assessment for income tax for taxable year 2012 in the amount of ₱258,013,907.77, inclusive of surcharge and legal interest, is void, and thus, is hereby **CANCELLED and SET ASIDE**. Consequently, the PCL dated January 23, 2017 and the FNBS dated February 8, 2017 covering the

said assessed deficiency income tax liability are likewise **CANCELLED and SET ASIDE.**

SO ORDERED."

In his Motion, respondent asserts that he substantially complied with requirements of substituted service as required by law. First, the scope of work of Ms. Roselyn Dela Cruz, in her official capacity as loan clerk of the petitioner, necessarily includes receiving mails, served by way of personal or substituted services. Second, applying the "Doctrine of Apparent Authority", Ms. Roselyn Dela Cruz can be considered as an agent of the petitioner and is authorized to receive mail matters if no one from the head office is available to receive mails. Third, Revenue Officer Magsaysay R. Bacay (RO Bacay) did not directly cause the service of the Final Assessment Notice and Formal Letter of Demand (FAN/FLD) to Ms. Roselyn Dela Cruz but inquired with the guard on duty who the authorized representative is at the business premises of the petitioner to receive the subject FAN/FLD. Fourth, in a substituted service, the assessment may be left at the taxpayer's registered address with his/her clerk or with a person having charge thereof; ergo, Ms. Roselyn Dela Cruz, in her official capacity as loan clerk, is legally authorized to receive the FAN/FLD. Fifth, Ms. Roselyn Dela Cruz has all the right to refuse receipt of the FAN/FLD if indeed she is not clothed with authority to receive mail matters from the Bureau of Internal Revenue (BIR); however, she voluntarily received the said FAN/FLD without objection at that time of receipt on behalf of the petitioner, hence, said receipt by way of substituted service constitute valid service. Finally, there was no denial of due process to the petitioner as it previously requested for re-investigation in the administrative level before it hastily filed the Petition for Review without awaiting the final decision of the BIR.

On the other hand, in its comment, petitioner maintains that contrary to the respondent's claim, the FAN/FLD was never served to the petitioner. It further avers that even assuming without conceding that the same was actually served, the service did not follow respondent's own procedures rendering any assessment void.

Petitioner likewise reiterates that there was no valid personal service as the person who allegedly received the FAN/FLD was not authorized to receive tax assessments. It also points out that assuming that substituted service can be effected on a corporation, it was not valid in this case as the person who allegedly received the FAN/FLD was not a clerk or a person having charge of petitioner's office that can receive tax assessments.

On the application of the Doctrine of Apparent Authority, petitioner claims that such doctrine finds no application in this case as petitioner did not perform acts to make it appear that Ms. Roselyn Dela Cruz is a person authorized to receive notices and assessments from the BIR. Petitioner further avers that the elements of the said doctrine applies to Mr. Francisco who went to the BIR offices to receive the Preliminary Assessment Notice (PAN), because he was held out to be the internal auditor of petitioner, and petitioner's acquiescence on his action when it was able to file a Reply to the PAN. Nonetheless, assuming that the substituted service can be validly done to a corporation, petitioner argues that Ms. Roselyn Dela Cruz as a receptionist or loan clerk is not a "clerk or a person having charge thereof". Petitioner claims that jurisprudence has interpreted this phrase as a person who actually manages the office of the person being served; it cannot be just any person having the title of "clerk" when clerk bears different meanings. Thus, plainly, a receptionist cannot be the clerk contemplated in Revenue Regulations (RR) No. 12-99[1].

On respondent's argument that the Petition for Review was filed prematurely as there was still a pending request for re-investigation by petitioner, petitioner emphasizes that it did not file a Request for Reinvestigation precisely because no FAN/FLD was ever issued to it. Petitioner points out that any correspondence sent by petitioner to respondent was to emphasize its request for the proper service of the FAN/FLD. Petitioner further avers that this issue has already been settled by the Court in its Resolution dated October 6, 2017, when it ruled that the FNBS dated February 8, 2017 constitutes the final action taken by respondent which may be appealed by petitioner to the Court.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

Notably, the arguments raised by the respondent are mere rehashes of the same facts and issues, which have already been thoroughly discussed, in the assailed Decision.

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[1] "SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty."

As already discussed in the assailed Decision, the service of a FAN/FLD among others, may be made through (1) personal service to the concerned party; (2) substituted service, in specific instances; or (3) service by mail.

With regard to substituted service, such mode of service can be resorted to only: (1) when the party is not present at the registered or known address; (2) when the party is not found therein, but refuses to receive the notice; and (3) if no person is found in the party's registered or known address.

Considering that petitioner is a corporation, the Court has emphasized that the service of the subject FAN/FLD shall bind petitioner, when such service was done to its board of directors; or to certain officers, committees or agents, pursuant to law or its corporate by-laws, or if there is a showing that the said board has authorized the said individuals, or has delegated the function or power receiving the said notices, either expressly or impliedly by habit, custom or acquiescence in the general course of business. Ordinarily, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.[2]

In the present case, the FAN/FLD was served to the petitioner through substituted service in view of the supposed absence of the concerned party, *i.e.*, the petitioner, by serving the subject notices to Ms. Roselyn Dela Cruz, a receptionist/loan clerk.

As pointed out in the assailed Decision, she has no authority to receive such notice from the BIR, as respondent presented no evidence to prove otherwise, and merely relied on RO Bacay's perception that she was authorized to do so.

In the same vein, respondent's reliance on the doctrine of apparent authority is misplaced. The doctrine of apparent authority provides that a corporation is estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts.[3] In the case of *Banate, et al. vs. Philippine Countryside Rural Bank (Liloan,*

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[2] See *Development Bank of the Philippines v. Sta. Ines Me/ale Forest Products Corporation*, G.R. No. 193068, February 1, 2017.

[3] *Advance Paper Corporation v. Arma Traders Corporation*, G.R. No. 176897, December 11, 2013.

Cebu), Inc., et al.,[4] the Supreme Court enunciates the doctrine of apparent authority, to wit:

> "Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. **The principal's liability, however, is limited only to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent.** There can be no apparent authority of an agent without acts or conduct on the part of the principal; such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant, and such acts or conduct must have produced a change of position to the third party's detriment." *(Emphasis supplied)*

Based on the foregoing, in order for apparent authority to apply, it is crucial to determine the acts of the principal which led third persons to reasonably believe that the agent has actual authority.

In the present case, the record is bereft of any proof showing that petitioner committed any acts that would induce belief that Ms. Dela Cruz has authority to receive the FAN/FLD for and in behalf of petitioner. Not even the supposed guidelines or procedures of the petitioner, which respondent claims would show that Ms. Roselyn Dela Cruz is considered an agent of petitioner and authorized to receive mail matters should no authorized person is available to receive mails, were presented.

Conversely, petitioner even assails the service of the FAN/FLD to Ms. Roselyn Dela Cruz as she was not authorized to receive such notice. Evidently, there is no apparent authority in this case.

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[4] G.R. No. 163825, July 13, 2010.

As to respondent's claim that in the substituted service, Ms. Roselyn Dela Cruz in her official capacity as loan clerk comes within the purview of "clerk or with a person having charge thereof".

Under Section 3.1.6(ii) of RR No. 12-99, as amended by RR No. 18-13[5], for substituted service, "if the known address is a place where business activities of the party are conducted, the notice may be left with **his clerk or with a person having charge thereof**." However, the term "with his clerk or with a person having charge thereof" requires clarification as the issue on whether Ms. Roselyn Dela Cruz, as a loan clerk, comes within the definition of the term.

Under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter.[6]

Applying the maxim, the phrase word "clerk" under substituted service must be taken together with the word "a person having charge thereof".

In the case of *Ma. Imelda M. Manotoc v. Court of Appeals, et. al.,*[7] the Supreme Court held that if the substituted service is done in the defendant's office or regular place of business, it must be served to the person in charge of the place, the pertinent portion of the ruling states:

> "If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, **the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the**

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[5] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

[6] *Francisco I. Chavez v. Judicial and Bar Council, et. al.,* G.R. No. 202242, July 17, 2012

[7] G.R. No. 130974, August 16, 2006.

> **prejudicial effects arising from inaction on the summons**. Again, these details must be contained in the Return." *(Emphasis supplied)*

In view of the above-cited ruling, the person who will receive the notice must be (1) a competent person managing the office or place of business; and (2) must have sufficient knowledge to understand the obligation of the defendant in the notice, its importance and the prejudicial effects arising from inaction.

Accordingly, the *"clerk or the person having charge thereof"* under Section 3.1.6(ii) of RR No. 12-99, as amended by RR No. 18-13, must refer to a competent person managing the office or place of business with sufficient knowledge to understand the importance and effects of the notice.

It must be emphasized that a FAN/FLD is a notice which affects the taxpayer's right to due process. Hence, in substituted service in taxpayer's known business address, it is appropriate that the subject notice be received by a person who manages the office or place of business as he/she generally has knowledge of the importance and effects of said notice.

Considering the foregoing, as a loan clerk who receive mail matters, Ms. Roselyn Dela Cruz cannot be considered as the "clerk" contemplated under Section 3.1.6(ii) of RR No. 12-99, as amended by RR No. 18-13, as she is not the person managing the office or place of business. Thus, there was improper service when respondent served the notice, through substituted service, to Ms. Roselyn Dela Cruz who has no authority to receive the FAN/FLD, or who can be considered as a person having charge thereof.

On respondent's argument that the Petition for Review was filed prematurely as there was still a pending request for re-investigation by petitioner, this issue has already been thoroughly discussed and resolved by the Court in Resolution dated October 6, 2017. To discuss them anew would be mere superfluity.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised in respondent's Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on June 22, 2021.

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

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice