REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CLARK WATER CORPORATION, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 8648

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 15 2020 ; 10:00a

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RESOLUTION

MINDARO-GRULLA, J.:

For the Court's resolution is respondent's **Motion Reconsideration (Re: Decision dated July 19, 2019)**, filed on August 7, 2019, with petitioner's **Comment (Re: Motion for Reconsideration dated August 7, 2019)**, filed on October 1, 2019.

In his Motion, respondent prays that the Decision dated July 19, 2019 be reconsidered in cancelling his deficiency assessments on the finding that he violated petitioner's right to due process of law, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the Instant Petition for Review is hereby **GRANTED**. Accordingly, the *[Formal]* Letter of Demand and Final Assessment Notice for deficiency income tax and value-added tax, inclusive of interest, surcharge and penalties amounting to ₱2,823,155.13 for the taxable year 2007, are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**

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In support of his Motion, respondent mainly raises the following grounds:

1. The Honorable Court has no jurisdiction over this particular case; and

2. The Honorable Court gravely erred in ruling that the assessment is void for failure of respondent to prove that petitioner received the assessment.

After due consideration, respondent's Motion is bereft of merit. Notably, the arguments proffered in the present Motion are mostly lifted from his Memorandum[1] dated July 26, 2018 which have already been passed upon and discussed in the assailed Decision.

However, the only thing added in the present Motion that is worth discussing is respondent's claim that this Court erroneously applied the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[2] which was based on *Republic of the Philippines vs. Court Appeals, and Nielson & Company, Inc.*[3], and is collection case where the Commissioner of Internal Revenue (CIR) is the petitioner. He explains that being the petitioner, the CIR obviously had the initial burden to discharge the presumption in view of the taxpayer's denial of receipt thereof. As such, the case of *Republic vs. Court of Appeals* was wrongfully cited in the *Barcelon, Roxas Securities case* and now erroneously perpetuated.

Nonetheless, respondent continues that there is still a saving grace in the latter part of the *Barcelon, Roxas Securities case* which should be considered by this Court, to wit:

> "x x x. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative.** <u>And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts</u> and any

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[1] Docket vol. III, pp. 1679-1694.
[2] G.R. NO. 157064, August 7, 2006.
[3] G.R. No. L-38540, April 30, 1987.

> other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self-serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing." *(Emphasis supplied)*

Thus, by presenting the following documents: 1) copy of the Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Final Assessment Notice (FLD/FAN); 2) transmittal sheet forwarded by the Assessment Division to the Administrative Division of Bureau of Internal Revenue (BIR) Revenue Region No. 4 showing indorsement of PAN and FLD/FAN for mailing; and, 3) registered mail *via* Registry Receipt Nos. 476 and 567 for PAN and FLD/FAN, respectively, respondent clearly showed that he was able to sufficiently prove actual mailing thereof.

This Court does not agree.

Inopportunely, respondent mistakes the release of assessment notices from receipt of assessment notices.

In the cited case of *Republic of the Philippines vs. Court Appeals, and Nielson & Company, Inc.*[4], it is clear that the disputable presumption "a mailed letter is deemed received by the addressee in the course of mail", is subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee, *viz.*:

> "We do not agree with petitioner's above contentions. As correctly observed by the respondent court in its appealed decision, while the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still, this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Thus:

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[4] *Ibid.*

'Appellee contends that per Exhibit A, the notice was released and mailed to the appellant by the BIR on Aug. 4, 1955 under the signature of the Chief, Records Section, Office; that since the original thereof was not returned to the appellee, the presumption is that the appellant received the mailed notice. This is correct, but this being merely a mere disputable presumption, the same is subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was received by the addressee. The appellee, however, argues that since notice was released and mailed and the fact of its release was admitted by the appellant the admission is proof that he received the mailed notice of assessment. We do not think so. It is true the Court a quo made such a finding of fact, but as pointed out by the appellant in its brief, and as borne out by the records, no such admission was ever made by the appellant in the answer or in any other pleading, or in any declaration, oral or documentary before the trial court. We note that the appellee has not met this challenge, and after a review of the records, we find appellant's assertion well-taken.'

Since petitioner has not adduced proof that private respondent had in fact received the demand letter of 16 July 1955, it cannot be assumed that private respondent received said letter." *(Emphasis Supplied)*

Furthermore, in the case of *Estate of The Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[5], it was held that due process requires that the taxpayer must **actually receive** the assessment notices, *viz.*:

"In Republic v. De le Rama, we clarified that, when an estate is under administration, notice must be sent to the administrator of the estate, since it is the said administrator, as representative of the estate, who has the legal obligation

[5] G.R. No. 155541, January 27, 2004.

> to pay and discharge all debts of the estate and to perform all orders of the court. In that case, legal notice of the assessment was sent to two heirs, neither one of whom had any authority to represent the estate. We said:
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> > 'The notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect. In the case of Bautista and Corrales Tan v. Collector of Internal Revenue ... this Court had occasion to state that 'the assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment.' It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory. (Citations omitted, emphasis supplied.)'"

Finally, in the case of *Gonzalo P. Nava vs. Commissioner of Internal Revenue*,[6] the Supreme Court stressed that "[w]hile we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. <u>Mere notations made without the taxpayers intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense</u>."

Consequently, the failure of the respondent to prove that petitioner or its authorized representative indeed received the assessment notices as required by Sec. 228 of the National Internal Revenue Code of 1997, as amended, renders the same void for being violative of petitioner's right to due process. Considering that petitioner did not actually receive the assessment, the same cannot be considered final, executory, and demandable. Therefore, respondent's right to collect thereon has no basis.

From the foregoing, this Court finds no compelling reason to reverse or modify the assailed Decision.

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[6] G.R. No. L-19470, January 30, 1965.

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

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice