REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ADMORLINA L. FONTEJON,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9314

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 20 2018 9:25 AM

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RESOLUTION

MANAHAN, J.:

On December 14, 2017, Respondent Commissioner of Internal Revenue (CIR) filed a **Motion for Reconsideration Re: Decision promulgated on November 28, 2017**[1] without petitioner's comment[2] despite due notice.[3]

Said motion sought the modification of the decision promulgated on November 28, 2017 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing, the Petition for Review is hereby **GRANTED**. Consequently, the deficiency IT and VAT assessments affirmed in the assailed FDDA are hereby **CANCELLED**.
>
> **SO ORDERED**.

It also prays that judgment be rendered instead by ordering the petitioner to pay the deficiency Income Tax (IT)

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[1] Docket, CTA Case No. 9314, pp. 235-245.
[2] *Id.*, Records Verification dated January 31, 2018, p. 248.
[3] *Id.*, Notice of Resolution dated December 18, 2017, p. 246; Resolution dated December 18, 2017, p. 247.

and value-added tax (VAT) plus 50% surcharge and 20% deficiency and delinquency interest.

Respondent argues that this Court erred in: (1) declaring the assessment *void ab initio* for the same was issued beyond the three-year prescriptive period; (2) ruling that the absence of Letter of Authority (LOA) violated petitioner's right to due process; and (3) ruling that the failure of the respondent to prove petitioner's actual receipt of PAN violated petitioner's right to due process.

As to the ruling that said assessment was issued beyond the three-year prescriptive period, respondent insists that such assessment was the result of the reconciliation and matching of information/data provided by the third-party sources in the national office of the Bureau of Internal Revenue (BIR). Such attachment marked as "Annex B" is a computerized matching which shows a percentage of discrepancy of 90.63. He also argues that the Details of Taxpayers Customer's Records attached as "Annex C" show the detailed computation of discrepancy as admitted by the petitioner.

Respondent should have presented direct evidence such as invoices, receipts or source documents that will prove that such discrepancy from the third-party information on purchases was indeed petitioner's income earned from her business and not merely deducing it from a comparison of a summary list from her IT Return and immediately assuming such discrepancy as income.

Respondent should be aware that he has the burden of proving by direct evidence the facts at issue in support of his claim that the amount of the alleged discrepancy is indeed an income. However, said annexes did not amount to a direct evidence which would prove that the alleged discrepancy is indeed petitioner's income.

Further, we reiterate our factual finding in the said issue. A perusal of the Final Decision on Disputed Assessment (FDDA) will reveal that the reason for the alleged discrepancy was anchored on petitioner's failure to provide a breakdown of her gross receipts from her contracting services representing the agency fee, and the salaries of mason, carpenters, and other construction workers.

Thus, respondent presumed that the entire contract price earned by petitioner was taxable as income in accordance with Revenue Memorandum Circular (RMC) No. 39-2007 entitled "Clarifying the Income Tax and VAT Treatment of Agency Fees/Gross Receipts of Security Agencies Including the Withholding of Taxes Due thereon." However, the afore-quoted BIR guidelines govern the Security Agency industry which is not the business of the petitioner who is a labor contractor.

In the case of *Spouses Nilo and Eliadora Ramos v. Raul Obispo et al.*,[4] the Supreme Court ruled that a party should rely on the strength of its own evidence and not on the weakness of the evidence of the opposing party, to wit:

> In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, **parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent**... (*Emphasis supplied*)

Thus, respondent should have not merely presumed that the alleged discrepancy, due to petitioner's failure to provide a breakdown of her gross receipts from her contracting services representing the agency fee, and the salaries of mason, carpenters, and other construction workers, was undeclared income without providing primary source documents that will corroborate such allegation.

Hence, the ten-year prescriptive period under Section 222 of the National Internal Revenue Code of 1997, as amended, will not apply because respondent failed to prove that petitioner committed actual fraud. On the contrary, his findings were merely the result of a deductive reasoning.

As to the ruling on the absence of LOA, respondent insists that since the erroneous payment of tax was already manifested on the face of petitioner's income tax return (ITR), there is no need for him to issue a LOA to examine petitioner's book of accounts and other accounting records.

He even disagreed with the ruling as to the absence of LOA which affects the right of the taxpayers to due process as

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[4] G.R. No. 193804 dated February 27, 2013.

enunciated in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue.*[5] He even justified that LOA is unnecessary citing this Court's decision under CTA Case No. 8543 entitled "*MASIN-AES PTE. LTD PHILIPPINE BRANCH v. CIR.*"

Such reliance is totally misplaced. In the case of *Commissioner of Internal Revenue v. Sony Philippines Inc.*,[6] the Supreme Court emphasizes the necessity of the LOA in the conduct of examination by any revenue officers, to wit:

> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.** (*Emphasis supplied*)

Further, petitioner should be aware that the decision of this Court does not constitute a precedent similar to that of the decision rendered by the Supreme Court. In the case of *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*,[7] the high court ruled that:

> As to petitioner's contention that it relied on the previous decisions of the CTA on the matter, the Court finds it apt to quote its ruling in San Roque:
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> There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that **CTA decisions do not constitute precedents, and do not bind this Court or the public**. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. **Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system**. (*Emphasis supplied*)

Moreover, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine

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[5] G.R. No. 222743 dated April 5, 2017.
[6] G.R. No. 178697 dated November 17, 2010.
[7] G.R. No. 196907 dated March 13, 2013.

of *stare decisis* as amply explained in the case of *Amelia D. De Mesa et al. v. Pepsi Cola Products, Inc. et al.*,[8] to wit:

> The principle of *stare decisis et non quieta movere*[9] is entrenched in Article 8 of the Civil Code, to wit:
>
> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. (emphasis supplied)

Thus, the doctrine in *Medicard case* and *Sony case* takes precedence over the *rationale* of said CTA decision.

As to the ruling on respondent's failure to prove the actual receipt of the assailed PAN by the petitioner, respondent argues that notices were sent to her registered address, hence, it is unbelievable that she denies such receipt. Further, she was aware of the investigation conducted against her. Hence, she was already estopped from denying such actual receipt.

It is true that when a letter was duly directed and mailed, it is presumed that it was received in the regular course of the mail. [10] However, this presumption is merely a disputable presumption, hence, when the party who is supposed to receive said letter denies that it actually received such, that presumption is destroyed.

Thus, the burden to prove otherwise is shifted back to the one who claims that it directed and mailed said letter and he must show through valid evidence that indeed there was an actual receipt made by the intended person. This is the rationale in the case of *Barcelon, Roxas Securities, Inc. v.*

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[8] G.R. Nos. 153063-70 dated August 19, 2005.
[9] To adhere to precedents and not to unsettle things which are established.
[10] Section 3(v), Rule 131 of the Rules of Court.

Commissioner of Internal Revenue,[11] which was cited in the assailed decision.

We reiterate the factual findings of this Court. Although the PAN was sent through registered mail, the Registry Return Receipt[12] adduced by the respondent to contravene petitioner's allegation, showed that the person who received the same was not the petitioner. A certain "Angelina B. Lomogo" was actually the one who signed the portion on the "signature of addressee's agent" of the said registry return receipt.

Respondent should have presented a contrary evidence during the trial that the said "Ms. Lomogo" was a person really authorized by the petitioner to receive any notices from the respondent in order that the petitioner may be bound by the receipt of said person. However, respondent failed to do so. Respondent did not even adduce any evidence to prove if such person is an employee of the petitioner.

Thus, this motion must fail.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision promulgated on November 28, 2017** is hereby **DENIED** for lack of merit. Accordingly, the assailed decision promulgated on November 28, 2017 is hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[11] G.R. No. 157064 dated August 07, 2006.
[12] Docket, CTA Case No. 9314, Exhibit R-13, p. 190.