REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ESPER R. VARGAS, JR.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8750

Members:
BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
MAY 27 2016
12:15 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution are the following:

1. Respondent's "Motion for Reconsideration" ("Respondent's MR") filed on March 29, 2016, with petitioner's "Opposition to Respondent's Motion for Reconsideration" filed on April 18, 2016; and

2. Petitioner's "Motion for Partial Reconsideration" ("Petitioner's MR") filed on April 7, 2016 with respondent's "Opposition (Petitioner's Motion for Partial Reconsideration)" filed on April 6, 2016.

On March 8, 2016, the Court promulgated a Decision (the "Assailed Decision") wherein the Court cancelled the assessment made against petitioner for deficiency income tax and value-added tax ("VAT") for calendar year ("CY") 2007. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Respondent's assessment for deficiency income tax and VAT for CY 2007 in the aggregate amount of Php99,478,226.19, inclusive of interest, surcharges, and penalties under the Final Assessment Notice dated July 20, 2011 issued pursuant to Letter Notice No. 045-RLF-07-00-00063, and the Warrant of Garnishment addressed to the Bank of the Philippine Islands are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

After a careful review of the grounds raised in the Motions for Reconsideration and the corresponding Oppositions thereto, the Court finds no new matters or arguments which have not been considered in the Assailed Decision. Consequently, the Court finds both Respondent's MR and Petitioner's MR devoid of merit. Nevertheless, the Court will address the issues raised by the parties if only to reinforce the discussion in the Assailed Decision.

Respondent's MR

Respondent, in her Motion for Reconsideration, prays that the Court reconsider the Assailed Decision, and order petitioner to pay the deficiency income tax and VAT for CY 2007 in the aggregate amount of Php99,478,226.19, inclusive of interest, surcharges, and penalties. Respondent maintains that the Court erred in ruling that the assessments made against petitioner are void for failure to comply with due process, and cannot be final, executory, and demandable. According to her, petitioner was accorded due process; that the final assessment notice ("FAN") may be sent through registered mail, and should petitioner fail to respond within the prescribed period, the same shall be considered actually and constructively received by petitioner; that considering petitioner failed to respond to the FAN despite receipt, the same has become final, executory, and demandable; and that the denial of petitioner as to petitioner's receipt of the FAN is baseless and contrary to the evidence presented.

On the other hand, petitioner, in its Opposition to Respondent's MR, argues that Respondent's MR is manifestly *pro forma*, and that the Assailed Decision has become final and executory.

Petitioner's MR

On April 7, 2016, Petitioner's MR was filed by courier. In Petitioner's MR, petitioner states that it received a copy of the Assailed Decision on March 22, 2016. Further, petitioner argues that respondent should be made liable in her personal capacity for issuing and enforcing the deficiency tax assessments without due process of law, and that respondent is liable to pay the petitioner actual damages on the ground of bad faith. Thus, petitioner prays that the Assailed Decision be partially reconsidered and set aside by awarding to petitioner actual damages in the form of filing fees and attorney's fees.

On the other hand, respondent, in its Opposition to Petitioner's MR, posits that petitioner was accorded due process pursuant to Revenue Regulations ("RR") No. 12-99[1]; that respondent cannot be held personally liable because there was no bad faith and grave abuse of discretion in the performance of her duty because the issuance of the assessment was made in accordance with the existing procedure and/or law; and that petitioner is not entitled to actual damages considering there was no grave abuse of discretion and the State cannot be sued without its consent.

The Ruling of the Court

Petitioner was not accorded due process of law.

Anent Respondent's MR, she posits that following the provisions of RR No. 12-99, the FAN may be sent to the taxpayer by registered mail; that should the taxpayer fail to respond, it is considered to have been constructively received by the latter. She further cites *Section 3(v), Rule 131 of the Revised Rules of Court* on disputable presumptions, which reads as follows:

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[1] September 6, 1999.

> **Sec. 3.** ***Disputable presumptions***. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> x x x x x x x x x
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail;[2]

The rules are clear. The presumption that a letter sent by mail was received in due course is merely a disputable presumption, which can be contradicted and overcome by other evidence. As applied to tax assessments, if the taxpayer categorically disavows receipt of the assessment, the burden is shifted to the Bureau of Internal Revenue ("BIR") to prove that the taxpayer actually received the same. Thus, in the recent case of *Commissioner of Internal Revenue ("CIR") v. GJM Philippines Manufacturing, Inc.*[3], the Supreme Court held, as follows:

> Thus, the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes. Here, GJM filed its Annual Income Tax Return for the taxable year 1999 on April 12, 2000. The three (3)-year prescriptive period, therefore, was only until April 15, 2003. The records reveal that the BIR sent the FAN through registered mail on April 14, 2003, well-within the required period. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period. GJM, however, denies ever having received any FAN.
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> 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. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. 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

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[2] Underscoring ours.
[3] G.R. No. 202695, February 29, 2016.

> 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.
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> x x x x x x x x x[4]

In the present case, petitioner denies having received the FAN. Accordingly, the burden of proving petitioner's actual receipt of the FAN shifted to respondent.

Respondent alleges that she sufficiently presented evidence to support her claim that the FAN, which was sent by registered mail, was duly received by petitioner's authorized representative. However, records disclose that even respondent's witness, Ms. Betty B. Esplana, was not able to confirm petitioner's actual receipt of the FAN.

Thus, for failing to prove petitioner actually received the FAN, respondent cannot say that petitioner was accorded due process. Petitioner was not given the opportunity to contest the findings of respondent before the collection proceedings commenced.

Petitioner's MR was belatedly filed; petitioner is not entitled to damages.

Anent Petitioner's MR, records disclose that petitioner received a copy of the Assailed Decision on March 22, 2016, and that Petitioner's MR was filed on April 7, 2016. *Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals*[5], provides that a motion for reconsideration may be filed fifteen (15) days from receipt of the assailed decision. Applying this to the instant case, petitioner has until April 6, 2016, within which to file his Motion for Reconsideration.

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[4] Underscoring ours.

[5] Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals provides:

> **Sec. 1.** ***Who may and when to file motion.*** - Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Moreover, *Section 3, Rule 13 of the Revised Rules of Court* provides for the modes of filing pleadings and motions - either personally or by registered mail. If filing is made personally, the date of filing is the date when the court receives the pleading. On the other hand, if filing is made by registered mail, the date of filing is the date of mailing. *Section 3, Rule 13 of the Revised Rules of Court* provides:

> **Sec. 3.** ***Manner of filing.*** - The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court, or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

The rules of procedure are clear. Filing of pleadings and motions can only be done personally or by registered mail. The rules do not provide for filing of pleadings, such as Petitioner's MR, by private courier. For filings by private courier, the date of actual receipt by the court is deemed the date of filing of the pleading.[6]

As applied to appeals filed by private courier, the Supreme Court held in *Heirs of Numeriano Miranda, Sr. v. Miranda*[7], as follows:

> It is basic and elementary that a Notice of Appeal should be filed "within fifteen (15) days from notice of the judgment or final order appealed from."
>
> <u>Under Section 3, Rule 13 of the Rules of Court, pleadings may be filed in court either personally or by registered mail</u>. <u>In the first case, the date of filing is the date of receipt</u>. <u>In the second case, the date of mailing is the date of receipt</u>.
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> In this case, however, the counsel for petitioners filed the Notice of Appeal *via* a private courier, a mode of filing not

[6] *Uy v. Flores*, A.M. No. RTJ-12-2332, June 25, 2014, 727 SCRA 182.
[7] G.R. No. 179638, July 8, 2013, 700 SCRA 746.

> provided in the Rules. Though not prohibited by the Rules, we cannot consider the filing of petitioners' Notice of Appeal via LBC timely filed. It is established jurisprudence that "the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court"; instead, "the date of actual receipt by the court x x x is deemed the date of filing of that pleading." Records show that the Notice of Appeal was mailed on the 15th day and was received by the court on the 16th day or one day beyond the reglementary period. Thus, the CA correctly ruled that the Notice of Appeal was filed out of time.[8]

In the present case, Petitioner's MR was mailed by private courier on the 15th day from petitioner's receipt of the Assailed Decision, and was received by the Court on the 16th day, or on April 7, 2016; thus, the Court holds that Petitioner's MR was belatedly filed.

Even assuming Petitioner's MR was timely filed, the Court holds that petitioner is not entitled to actual damages. No bad faith can be attributed to respondent, and respondent was merely performing her duty, when she issued the assessment against petitioner for CY 2007.

In *Vinzons-Chato v. Fortune Tobacco Corporation*[9], the Supreme Court discussed the validity of a suit against a public officer in his/her private capacity in this wise:

> On the first issue, the general rule is that a public officer is not liable for damages which a person may suffer arising from the just performance of his official duties and within the scope of his assigned tasks. An officer who acts within his authority to administer the affairs of the office which he/she heads is not liable for damages that may have been caused to another, as it would virtually be a charge against the Republic, which is not amenable to judgment for monetary claims without its consent. However, a public officer is by law not immune from damages in his/her personal capacity for acts done in bad faith which, being outside the scope of his authority, are no longer protected by the mantle of immunity for official actions.

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[8] Underscoring ours.
[9] G.R. No. 141309, June 19, 2007, 525 SCRA 11.

In the issuance of the assessment against petitioner, the Court reiterates that the same was made in the course of the performance of respondent's duties. Absent a showing of bad faith in the issuance thereof, the Court thus holds that no actual damages are due against respondent therefor.

From the foregoing, the Court finds no cogent reason to reverse and set aside the Assailed Decision.

WHEREFORE, premises considered, the "Motion for Reconsideration" filed by respondent on March 29, 2016 is **DENIED** for lack of merit. On the other hand, the "Motion for Partial Reconsideration" filed by petitioner on April 7, 2016 is **DENIED** for being filed out of time and for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice