REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MINDANAO SANITARIUM & HOSPITAL COLLEGE INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8673

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 10 2019
10:30 a.m.

x---x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration (Re: Decision promulgated on 06 May 2019)**, filed on May 30, 2019, with petitioner's **Comment (On Respondent's Motion for Reconsideration)**, filed on July 23, 2019.

Respondent moves for the reconsideration of the Decision promulgated on May 6, 2019, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies and the Final Assessment Notices for alleged deficiency income tax and value-added for taxable year 2009 are **CANCELLED**.
>
> **SO ORDERED**."

Respondent contends that the Court erred in requiring respondent to prove actual receipt of the Preliminary Assessment Notice (PAN). He claims that petitioner is estopped from denying receipt of the PAN since it admitted the receipt of the Letter of Authority, Subpoena Duces Tecum, Formal Letter of Demand and Assessment Notices (FLD/FAN) and the Decision denying petitioner's protest to the FLD. Moreover, he asserts that the fact of mailing was duly supported by the Master List of Mail Matters as well as a Certification from the Postmaster. Respondent also claims the PAN was properly addressed to petitioner Mindanao Sanitarium and Hospital College, Inc. Further, he asserts that assuming without admitting that what appears in the Certification of the Postmaster is a mail matter delivered to Mindanao Sanitarium and Hospital, Inc., respondent should not be faulted to the alleged misdelivery of the PAN. He argues that the actual service of the mail matter to petitioner is already beyond the function and control of respondent.

Respondent further argues that the Court erred in declaring the FAN void for the alleged failure to comply with the requirements of Revenue Regulations (RR) No. 2-98 [*sic*]. He claims that the case of *Commissioner of Internal Revenue vs. Metro Star Superama,* which speaks of a total deprivation of due process or a person's right to be heard, cannot be applied to the instant case considering that petitioner has always been accorded due process from the commencement of the audit proceedings up to the eventual issuance of the FLD and the Decision denying its protest. He also cites the case of *Commissioner of Internal Revenue vs. Menguito*[1] where the Supreme Court ruled that a pre-assessment notice does not bear the gravity of a formal assessment notice and that the lack of said notice inflicts no prejudice on the taxpayer for as long as it is properly served a formal assessment notice. In this case, respondent claims that petitioner was duly served with the FLD and FAN, and it was never denied due process since it was duly informed of the facts and the law upon which the assessments were made and was given a real opportunity to be heard.

On the other hand, petitioner counters that the Certification issued by the Iligan City Postmaster specifically mentioned the delivery of mail matter no. 14241 to Mindanao Sanitarium and Hospital which is not the petitioner. It further claims that the dissenting opinion in the case of *Commissioner of Internal Revenue vs. South Entertainment Gallery*, CTA *En Banc* No. 1246, is not applicable since it presented rebuttal evidence to buttress its position that no PAN was received from the respondent. It also asserts that the factual milieu in *Commissioner of Internal Revenue vs. Menguito* is not in four-squares with the instant case considering that said case happened during the regime of the 1977 Tax Code, including RR No. 12-85, while the case at bar falls under Section 228 of the 1997 Tax Code, as implemented by RR No. 12-99, hence, respondent's reliance on *Menguito* is misplaced because RR No. 12-85 is irrelevant for having been superseded by RR No. 12-99.

Respondent's motion lacks merit.

To reiterate, Section 228 of the NIRC of 1997, as amended, provides the procedure in tax assessments, as follows:

---

[1] G.R. No. 167560, September 17, 2008.

"SEC. 228. *Protesting of Assessment.* – **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis supplied*)

To implement the above provision, Section 3.1.2 of RR No. 12-99 provides, as follows:

"3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice** (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and

> regulations, or jurisprudence on which the proposed assessment is based xxx. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." (*Emphasis supplied*)

From the provision quoted above, it is clear that the sending of a PAN to the taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the Commissioner of Internal Revenue (CIR) to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process. Thus, failure to send a PAN stating the facts and the law on which the assessment was made as required by Section 228 of RA No. 8424, renders the assessment made by the CIR void.[2]

In the case of *Allied Banking Corporation (now Philippine National Bank) vs. Guzman, Sr.*[3], the Supreme Court held that:

> "On the basis of Section 3(v), 12 Rule 131, of the 1997 Rules of Court, the Court has consistently ruled that when a mail matter was sent by registered mail, there arises a disputable presumption that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, the Court had the occasion to stress that in order to prove the fact of mailing, the second requisite above, it is important that a party proving the same present sufficient evidence thereof, such as 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, to wit:
>
> > On the matter of service of a tax assessment, a further perusal of our ruling in Barcelon is instructive, *viz.*:

---

[2] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[3] G.R. No. 225199, July 9, 2018.

Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held 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 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 (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:

> The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).

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. 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 and any 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. Thus:
>
> xxx.
>
> **The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed**. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. It merely accepted the letter of Metro Star's chairman dated April 29, 2002, that stated that he had received the FAN dated April 3, 2002, but not the PAN; that he was willing to pay the tax as computed by the CIR; and that he just wanted to clarify some matters with the hope of lessening its tax liability." (*Emphasis supplied*)

Based from the foregoing, the rule is that in case the taxpayer denies receipt of the assessment notices from the respondent, the latter has the **burden to prove** by competent evidence that the required notices were actually received by the taxpayer. To prove the fact of mailing, it is essential for the respondent to present the registry receipt issued by the Bureau of Posts or the Registry return card signed by the taxpayer or its authorized representative or at least a Certification issued by the Bureau of Posts attesting to the same fact.

In this case, respondent admitted that he was not able to produce the registry return cards but he was able to present a Certification from the Postmaster, to prove the service of PAN to petitioner.[4] However, an examination of the Certification issued by Postmaster IV Macapado P. Caye reveals that the letter was addressed and delivered to a certain Mindanao

---

[4] Respondent's Motion for Reconsideration (Re: Decision promulgated on 06 May 2019), docket, vol. 2, p. 870.

Sanitarium and Hospital instead of Mindanao Sanitarium and Hospital College, Inc. (petitioner). It must be noted that Mindanao Sanitarium and Hospital College, Inc. (petitioner) and Mindanao Sanitarium and Hospital, Inc. are two different entities. Thus, respondent failed to discharge his burden and prove his allegation that the PAN dated July 17, 2012 was properly served on and received by petitioner.

Moreover, the case of *Commissioner of Internal Revenue vs. Menguito* cited by respondent in support of his argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of RR No. 12-85 which sought to interpret Section 229 of the old tax law. Republic Act No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid. The regulation then, on the other hand, simply provided that a notice be sent to the taxpayer in the form prescribed, and that no consequence would ensue for failure to comply with that form.[5]

Accordingly, the absence of any proof by competent evidence of petitioner's receipt of the PAN, the assessment made by respondent is void.

A void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[6]

Taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes should be exercised "reasonably and in accordance with the prescribed procedure." The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.[7]

---

[5] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

[6] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018, citing *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

[7] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated on 06 May 2019)**, is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice