REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TROREV REALTY CO., as represented by its President, ROBERTO R. IGNACIO,
Petitioner,

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9251

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of this Court is respondent Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration (re: Decision dated July 18, 2019)*[1] filed via registered mail on August 6, 2019 with petitioner Trorev Realty Co.'s *Comment to the Motion for Reconsideration*[2] filed via registered mail on September 12, 2019.

Respondent assails the Decision dated July 18, 2019,[3] (the "Assailed Decision") of this Court granting petitioner's Petition for Review.

[1] Docket, Vol. II, pp. 593-599.
[2] *Id.*, pp. 603-605.
[3] *Id.*, pp. 575-592.

Respondent moves for reconsideration of the Assailed Decision based on the following grounds:[4]

I.

Petitioner was duly served with the Preliminary Assessment Notice (PAN).

II.

Petitioner was duly served with and actually received the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD).

In his *Motion*, respondent insists that petitioner was duly served with the PAN at its registered address as per the BIR Integrated Tax System (ITS) which is at 423-C Natividad Building, Escolta, Binondo, Manila.[5] According to respondent, the said PAN was served to petitioner by registered mail under Registry Receipt No. 913607.[6] However, the said registered mail matter was returned to respondent by the Post Office for failure of the petitioner to claim the same after three notices, with a notation "no auth. person to receive".[7] Respondent also points out that petitioner has neither transferred its registered business address nor informed the BIR of its forwarding address.[8] Accordingly, respondent posits that the subject PAN, for all intents and purposes, was deemed served to petitioner.[9]

Respondent also avers that petitioner was duly served with the FAN and FLD at its registered address and that the subject assessments became final and executory for failure of petitioner to timely file an appeal before this Court.[10] Thus, this Court has no jurisdiction to entertain the present case.[11]

In its *Comment*, petitioner maintains that the Assailed Decision is very clear that respondent should strictly comply with the notice requirements prescribed by the laws and rules and regulations.[12] Petitioner contends that there is no compelling reason to overturn the

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[4] *Id.*, p. 594.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*, pp. 595-597.
[11] *Id.*
[12] *Id.*, pp. 603-604.

Assailed Decision since there is no evidence adduced to prove strict compliance to the required notice of PAN to the petitioner.[13] Petitioner also claims that respondent did not explain the fact that the envelope containing the PAN with Registry Receipt No. 913607 was already opened when presented in court.[14] Finally, petitioner stresses that respondent failed to explain the reason why the latter did not resort to other recognized modes of service of the PAN under Section 3.1.6 of RR No. 12-99 as amended.[15]

After judicious evaluation of the arguments raised by the parties and the relevant facts gathered from the records vis-à-vis the applicable laws, rules and regulations, and jurisprudence on the matter, this Court finds no substantial matter much less any compelling reason that would warrant the modification let alone the reversal of the Assailed Decision. Truth be told, the arguments raised by respondent in his *Motion* are mere restatements, if not repetition, of those presented in the Petition for Review, which this Court already sufficiently discussed and passed upon in the Assailed Decision. Verily, respondent's *Motion* is devoid of any merit and thus should be denied.

This Court stands by its ruling that the subject assessment is void and of no legal effect due to respondent's failure to inform petitioner of the facts and the law on which the subject assessment is made through a valid service of PAN, as strictly required by Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC).

To recapitulate, this Court already explained in the Assailed Decision that Section 228 of the 1997 NIRC categorically mandates that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. The said provision also explicitly provides that failure to do so shall make the assessment null and void. Moreover, in the case of *Commissioner of Internal Revenue v. Metro Star Superama*,[16] the Supreme Court had ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC and Revenue Regulations No. 12-99, as amended, is tantamount to a denial of due process and that the absence of a PAN will render nugatory any assessment made by the tax authorities. On the other hand, the Supreme Court held in the case of *Commissioner of Internal Revenue v. GJM Philippines*

[13] *Id.*, p. 604.
[14] *Id.*
[15] *Id.*
[16] G.R. No. 185371, December 8, 2010, 637 SCRA 644.

Manufacturing, Inc.[17] that when the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the tax authorities to prove by competent evidence that such notice was indeed received by the addressee in the due course of mail.

In the present case, there is no valid service of the PAN. As found by this Court based on evidence duly presented as well as the admission by respondent himself, the PAN was served by registered mail but was returned to sender for failure of petitioner to claim the same despite three notices. While it is true that petitioner has the duty to notify respondent of the change of its registered business address and to update its registration status, petitioner's failure to do the same does not necessarily negate respondent's strict obligation to inform the taxpayer in writing of the facts and the law on which the assessment is made.[18] As it happens, there are other recognized modes of service of the PAN under Section 3.1.6 of RR No. 12-99, as amended, which respondent could have resorted to considering the service by registered mail proved to be unsuccessful. Respondent apparently failed to perform any of those. It is, therefore, clear that respondent failed to satisfy the compulsory requirement under Section 228 of the 1997 NIRC, as amended, thus making the assessment he issued against petitioner null and void.

WHEREFORE, respondent's *Motion for Reconsideration (re: Decision dated July 18, 2019)* is **DENIED** for lack of merit.

SO ORDERED.

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

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[17] G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.
[18] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396.

WE CONCUR:

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

NO PART

JEAN MARIE A. BACORRO-VILLENA
Associate Justice