REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MID-LAND QC REALTY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8711

Members:

CASTANEDA, JR. *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
MAY 11 2016 4:31 pm

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RESOLUTION

CASANOVA, J.:

For resolution is respondent's **Motion for Reconsideration**, filed on February 9, 2016, with petitioner's **Opposition (Re: "Motion for Reconsideration" dated February 5, 2016)**, filed on February 19, 2016.

Respondent seeks reconsideration of the Court's Decision[1], promulgated on January 22, 2016, (the assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The Final Assessment Notice, Assessment Notice No. F-039-LNTF-07-VT-033 for Value-Added Tax, and Assessment Notice No. F-039-LNTF-07-IT-033 for Income Tax for the calendar year 2007, are

[1]Docket, pp. 326-353.

declared **NULL** and **VOID**. Accordingly, the Warrant of Distraint and/or Levy for the amount of Eight Million Two Hundred Fifty Four Thousand Six Hundred Twelve Pesos and 29/100 (₱8,254,612.29) is **CANCELLED** and deemed **WITHDRAWN**.

SO ORDERED."[2]

In the Motion for Reconsideration, respondent raises the following arguments in support of her stance:

1. The deficiency income tax and value-added tax (VAT) assessments for the year 2007 are already final, executory, and demandable;

2. There was no lack of due process in the issuance of assessment notices; and

3. The deficiency income tax and VAT assessments in the amounts of ₱5,857,888.41 and ₱2,396,723.88, respectively, for the year 2007 have factual basis.

On the other hand, petitioner claims that respondent's arguments are mere rehash of the previous submissions which have already been adjudicated and disposed of in the assailed Decision. Petitioner further contends that a motion which merely reiterates the previous arguments is utterly without merit and too unsubstantial to require consideration.

The Court finds respondent's Motion for Reconsideration bereft of merit.

The arguments raised by respondent have been sufficiently passed upon and fully discussed in the assailed Decision. At any rate, the Court shall emphasize the pertinent portions of the assailed Decision.

There was lack of due process in the issuance of assessment notices. Accordingly, the

[2]Docket, pp. 351-352.

Warrant of Distraint and/or Levy is invalid and unenforceable.

The deficiency income tax and VAT assessments for the calendar year 2007, issued by respondent against petitioner, never attained finality for failure of the former to observe the requisite due process in the issuance of assessment notices.

To recall, petitioner denied receipt of the Notice for Informal Conference and the Final Assessment Notice (FAN) or Formal Letter of Demand (FLD) which were sent *via* registered mail. At this point, the Court reiterates its ruling that when the taxpayer denies the receipt of the required notices, it is obligatory on the part of the respondent to prove that such notices were indeed received by the former.

The most recent jurisprudence on the matter is the case of *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*[3], where the Supreme Court once again highlighted that the direct denial of receipt of a mailed letter shifts the burden to the sender to prove that the said letter was, in fact, received by the addressee. The pertinent portions of Supreme Court's ruling are as follows:

> **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 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.
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau**

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

> **of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative.** And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The 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. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. **Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices**. (emphases ours)

In this case, the Registry Receipt is the sole proof of service of the Notice for Informal Conference, while only the Registry Return Receipt[4] was presented to prove the alleged sending of FAN. Respondent did not offer the affidavit of the person mailing the said notices. Furthermore, an examination of the Registry Return Receipt reveals that neither the date of delivery, nor the signature or name of addressee, or the signature of addressee's agent was filled up.

From the foregoing, respondent falls short of the requirements to establish petitioner's actual receipt of Notice for Informal Conference and FAN. *The failure to attach the required affidavit of service is not fatal if the registry receipt clearly shows service to the other party*[5]*, but in this case, the receipts were not filled up.*

Therefore, respondent's issuance of the Warrant of Distraint and/or Levy violated petitioner's right to due process since there was no valid service of assessment notices. The validity of the Warrant of Distraint and/or Levy rests upon the validity of tax assessment. Thus, to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal

[4]Exhibit R-13.
[5]*Philippine National Bank vs. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011.

principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[6]

The law imposes a substantive, not merely a formal, requirement. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.[7]

Even assuming both PAN and FAN were duly served upon petitioner, the assessment notices would still be cancelled for lack of factual basis.

As found in the records of the case, the assessments arose after a computerized matching was conducted using respondent's Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching – BOC Data Program. There appeared a discrepancy between the income declared per tax returns and the amount derived from the system generated document involving one of petitioner's withholding agents, Fresh N Famous Foods, Inc. (FNF).

Respondent's witness, Ms. Cristy E. Rejuso, testified that she was not involved in the generation of the "Details of Withholding Agent/Payors and Payees/Income Recipient Records", a matching document electronically generated from the BIR's computer and used in the assessment. She further conceded that she did not verify the contents of the document from FNF.[8]

Meanwhile, petitioner's witness Ms. Clarissa Hornilla, Tax Manager of Jollibee Worldwide Services, appeared in open court and testified that they erroneously posted petitioner's name in their Alpha List. The said witness, a third party, credibly testified and acknowledged their oversight while preparing the FNF Alpha List of Suppliers which erroneously reflected purchases from petitioner instead of purchases from another client of FNF.

[6] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils. Inc.*, G.R No. 198677, November 26, 2014.
[7] *Ibid.*
[8] Transcript of Stenographic Notes (TSN), June 4, 2014, pp. 12-35.

Considering that the sole basis of assessment is an unverified and unauthenticated document, without any support of externally sourced data, and considering further that the discrepancy between the amount appearing in petitioner's tax returns and Details of Withholding Agent/Payors and Payees/Income Recipient Records was the result of an erroneous posting committed by petitioner's withholding agent, the assessments must therefore fail.

Thus, the Court finds no cogent reason to reverse or modify the assailed Decision.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice