REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LOTTE CONFECTIONERY PILIPINAS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8923

Members:

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

Promulgated:
JUN 1 1 2020
4:30 p.m.

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration** filed on January 31, 2020, with petitioner's **Comment (Re: Respondent's Motion for Reconsideration Dated January 31, 2020)** filed on March 13, 2020.

On January 15, 2020, a Decision was promulgated by this Court, nullifying respondent's deficiency tax assessments for violating petitioner's right to due process of law, the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand dated January 13, 2014 and the Assessment Notice No. 043A-B144-10 issued by respondent against petitioner for deficiency income tax, Value-Added Tax, Expanded Withholding Tax, Final Withholding Tax, Withholding Tax on Compensation and compromise penalty for CY 2010,

in the aggregate amount of ₱29,838,011.46, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

In his Motion, respondent primarily claims that this Court erred in declaring his deficiency assessments void for failing to prove proper service of the Preliminary Assessment Notice (PAN) to the petitioner. Respondent claims that petitioner's convenient denial of having received the PAN is not only self-serving and have no probative value, but also that a bare denial without competent proof does not contradict the disputable presumption that a letter duly directed and mailed is received in the regular course of mail.[1]

Respondent further asserts that by submitting Registry Return Receipt No. 459 and Memorandum Transmittal, he had sufficiently established the fact of mailing of the PAN thereby shifting the *onus probandi* to petitioner to prove otherwise. More so, petitioner is estopped from denying receipt of the PAN after admitting receipt of his previous notices, *viz.*: Letter of Authority (LOA), Notice of Informal Conference (NIC) and Formal Letter of Demand (FLD), which were all sent to the same address.

On the other hand, in its Comment, petitioner argues that actual receipts of other documents cannot be used as evidence to prove that it also received the PAN, in accordance with Section 34[2], Rule 130 of the Rules of Evidence. The said Section clearly prohibits previous conducts to establish the commission or omission of the same person in another time. In this regard, petitioner's receipt of other document cannot bar it from denying actual receipt of the PAN by applying the principle of estoppel.

Nonetheless, petitioner asserts that the PAN failed to comply with the proper mode of service by registered mail. Petitioner continues that respondent has no explanation on why personal service was not practicable considering that the other documents were sent through personal service. Also, petitioner further claims that no sworn statement was prepared by the supposed server indicating the manner, place and date of service, as well as the name

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[1] Section 3(v), Rule 131, Rules of Court.

[2] Section 34. *Similar acts as evidence.* — Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time; but it may be received to prove a specific intent or knowledge; identity, plan, system, scheme, habit, custom or usage, and the like.

of the person who received the PAN. In fact, petitioner points out that respondent's witness, Revenue Officer Villanueva, even confirmed during his cross-examination, that there is no proof that the PAN was served.

After due consideration, the present Motion is bereft of merit.

Notably, the arguments raised by respondent are mere rehash of the same facts and issues which have already been thoroughly discussed in the Decision assailed.

To reiterate, 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.[3]

Again, in the present case, respondent failed to convince this Court that the PAN was actually received by the petitioner. By presenting pieces of evidence, *i.e.* the PAN[4], Registry Receipt No. 459[5] and Memorandum Transmittal[6], respondent merely proved the fact of mailing of the PAN, but not the fact of its actual receipt by petitioner. Hence, respondent failed to discharge his burden to show that petitioner received the PAN.

In view of the foregoing, given that respondent failed to prove that the PAN was indeed received by petitioner, the assessment is void as it violates the due process requirement under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, as implemented by Revenue Regulations No. 12-99[7], as amended.

Accordingly, this Court finds no new argument or cogent reason to reverse or modify the conclusions reached in the Decision assailed by respondent.

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[3] *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[4] Exhibit "R-2".
[5] Exhibit "R-2-A".
[6] Exhibit "R-2-B".
[7] SUBJECT: "Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty", September6, 1999.

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

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice