REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

GRAND GEO SPHERES CONSTRUCTION CORP., Petitioner,	**CTA CASE NO. 9891**
	Members:
- versus -	**UY,** *Chairperson*, **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 24 2023 8:00a.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration (Decision dated 11 January 2023)** filed on February 8, 2023, with petitioner's **Opposition/Comment (To Respondent's Motion for Reconsideration dated February 7, 2023)** filed on March 22, 2023.

On January 11, 2023, the Court promulgated a Decision cancelling respondent's deficiency income tax and value-added tax (VAT) assessments for violating petitioner's right to due process of law, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. The deficiency income tax and VAT assessments in the total amount of ₱8,205,711.61, including interest, for the taxable year 2011, are **VOID**.
>
> Accordingly, respondent's *Demand Before Suit* dated May 7, 2018 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

In the present Motion, respondent asserts that the Court erred in ruling that the deficiency income tax and VAT assessments issued against petitioner for taxable year 2011 in the aggregate amount of ₱8,205,711.61 are void for failing to sufficiently prove that petitioner received the Letter of Authority (LOA), Preliminary Assessment Notice (PAN), and Formal Letter of Demand/Final Assessment Notice (FLD/FAN). Respondent claims that petitioner deliberately refused receipt of the assessment notices, thereby leaving Revenue Officer (RO) Charlaraine G. Dytioco without recourse but to serve the said notices via professional courier to ensure immediate receipt thereof. Respondent insists that he has fully complied with the due notice requirements under the law and that there is also a presumption that RO Dytioco regularly performed her official duty in serving the said LOA, PAN, and FLD/FAN to petitioner. As such, the presumption that the assessment notices were properly served to petitioner stands.

On the other hand, in its comment, petitioner argues that the instant *Motion for Reconsideration* is pro-forma as the arguments presented therein are mere reiterations of the arguments that had been proffered in respondent's *Answer* and *Memorandum* which have already been weighed and considered by the Court in resolving the present case. Petitioner reiterates that respondent failed to prove by competent evidence that it indeed received the LOA, PAN and FLD/FAN. It continues that by categorically denying receipt of the said assessment notices, the burden was shifted to respondent to prove that the mailed assessment notices were actually received by petitioner or by its authorized representative.

The Court finds the present Motion for Reconsideration bereft of merit.

As correctly observed by petitioner, the arguments proffered by respondent are mere reiterations of what has already been considered, weighed, and resolved by the Court in the assailed Decision. It is also worth noting that in the present Motion for Reconsideration, and even his *Memorandum* filed on March 1, 2022, respondent mainly relied on the presumption of correctness and regularity in the performance of official duty to prove that the assessment notices were issued pursuant to the requirement of due process of law under the National Internal Revenue Code and pertinent Revenue Regulations (RR).

Again, it is well-settled that if the taxpayer denies having received an assessment from the respondent, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee, and 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.[1]

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[1] *Commissioner of Internal Revenue v. GJM Philippines, Manufacturing, Inc.*, G.R. No. 20265, February 29, 2016.

In the assailed Decision, since the petitioner denied receipt of the assessment notices, the burden is shifted to respondent to prove by competent evidence that petitioner indeed received the said assessment notices. However, the totality of the documentary and testimonial evidence presented did not suffice to prove that respondent properly served the PAN and FLD/FAN and were indeed received by petitioner. In fact, it was not even clearly established that the person who allegedly received the notices was authorized by petitioner to do so. Lastly, there was also no written report, certification, or any other pertinent document presented from the private courier that would have corroborated the service of the PAN and FLD/FAN.

Accordingly, without a clear indication as to who received the subject assessment notices, and whether the person who received the same is authorized to do so, as well as the respective dates of receipt thereof, this Court cannot conclude that respondent properly observed the due process requirements in the issuance of deficiency tax assessments, as mandated under RR No. 12-99,[2] as amended by RR No. 18-2013.[3]

While taxes are the lifeblood of government and should be collected without hindrance, the collection of taxes however should be exercised reasonably in accordance with law and with their own rules of procedure, and always with regard to the basic tenets of due process. Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[4]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in the present Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on January 11, 2023.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated 11 January 2023) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RIGPIS-LIBAN
Associate Justice

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[2] "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," dated September 6, 1999.

[3] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment," dated November 28, 2013.

[4] See *Commissioner of Internal Revenue v. Algue, Inc., et al.*, G.R. No. L-28896 February 17, 1988.

We concur:

ERLINDA P. UY
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO SAN-PEDRO
Associate Justice