REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

JOHNNY M. KING, JR.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9753

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUN 10 2021
4:01 p.m.

x - x

RESOLUTION

RINGPIS-LIBAN, *J.*:

Before this Court is Respondent's **Motion for Reconsideration (Re: Decision promulgated on 04 December 2020)**, filed through registered mail on December 23, 2020 and received by the Court on January 6, 2021, with Petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration)**, filed on February 11, 2021.

On December 4, 2020, the Court promulgated a Decision cancelling Respondent's deficiency tax assessments against Petitioner for violating the latter's right to due process of law, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject tax assessments embodied in the FAN/FLD dated January 14, 2013, FDDA dated October 9, 2013, the PCL dated January 13, 2014, and respondent's final decision dated November 17, 2017, ordering Petitioner to pay an aggregate amount of ₱40,325,186.32 representing deficiency income tax, VAT, EWT, and compromise

penalty, for taxable year 2009, are hereby **CANCELLED and SET ASIDE**.

SO ORDERED."

In his Motion, Respondent primarily argues that the Court erred in voiding his assessments for failing to prove service of the Preliminary Assessment Notice (PAN) to Petitioner. Respondent claims that the PAN was duly served and received by Petitioner, as evidenced by a *Transmittal Mailing of PAN* dated December 26, 2012 to Manila Central Post Office, Registry Return Receipt No. 918598, and the Registry Return Card, all issued by the Philippine Postal Corporation.

Respondent further states that the issue of non-receipt of the PAN is a mere afterthought of Petitioner considering that he never raised the same as an issue when he filed his protest against the Formal Assessment Notice and Formal Letter of Demand (FAN/FLD). Respondent also avers that Petitioner's denial that he did not receive the PAN is self-serving and have no probative value. He posits that bare denial without competent proof does not contradict the disputable presumption laid down in Section 3, Rule 131 of the Rules of Court.

Respondent likewise insists that the *onus probandi* has shifted to Petitioner when he presented independent pieces of evidence to prove Petitioner's receipt of the subject mail matters. As such, he is entitled anew to the presumption that the PAN was duly received in the ordinary course of mail. Lastly, Respondent asserts that since this is a civil case, preponderance of evidence should prevail and not mere technicalities.

On the other hand, in its Comment, Petitioner points out that the arguments presented by Respondent are rehashes his previous arguments and that he has offered nothing new to warrant the Court's reconsideration of the Decision dated December 4, 2020. Petitioner continues that it is indeed quite a logical absurdity for Respondent to insist that the burden of proving non-receipt of the PAN is on the Petitioner since how does non-receipt of something be proven other than by denying it.

Lastly, Petitioner asserts that simple perusal of the Registry Card will show that it was someone else, and not Petitioner, who actually received the PAN. Clearly then, there are sufficient proof to show that Petitioner did not actually received the PAN.

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

Again, 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.[1] Consequently, if the taxpayer denies having received an assessment from the Bureau of Internal Revenue (BIR), it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[2] Thus, the burden of proving Petitioner's actual receipt of the PAN lies with the Respondent.

Moreover, it is also required that Respondent must be able to show that the assessment notice was actually received by Petitioner's duly authorized agent. It must appear that the same was served on the addressee or a duly authorized agent of the addressee, as this requirement is apparent on the face of the registry return receipt itself. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."[3]

In the present case, by directly denying having received the PAN, the burden of proving actual receipt thereof has shifted from Petitioner to Respondent. To reiterate, while the Court agrees that the Registry Return Card proves the fact of mailing, the same together with the *Transmittal Mailing of PAN* dated December 20, 2012 to Manila Central Post Office, are however insufficient to establish the actual receipt by Petitioner of the PAN. Correspondingly, the improper service of PAN leads to the conclusion that no valid assessment was issued.

Perforce, the Court cannot stress enough the importance of the PAN as an aspect of procedural due process in the issuance of tax assessments. The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[4] In the same vein, the right of the taxpayer to respond to the PAN is also an important part of the due process requirement. To be sure, procedural due process is not satisfied with the mere issuance of a PAN *sans* giving the taxpayer an opportunity to respond thereto.

Corollarily, Section 228 of the National Internal Revenue Code (NIRC) of 1997, in relation to Section 3.1.2 of Revenue Regulations (RR) No. 12-99,[5] as

---

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

[2] *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.

[3] *Victor Ting "Seng Dee", et al. v. Court of Appeals, et al.*, G.R. No. 140665, November 13, 2000.

[4] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

[5] 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.

amended, gives Petitioner a fifteen (15)-day period from receipt of the PAN within which to respond thereto before the issuance of the FAN/FLD. Considering that Petitioner did not receive the PAN, he was not accorded the opportunity to refute the findings thereon. Needless to state, as part of the due process requirement in the issuance of a tax assessment, the date of actual receipt of the PAN by Petitioner must be clearly shown, since it is only at that point when the 15-day period will commence, and only after the lapse thereof, will Petitioner be considered in default which justifies the issuance of the FAN/FLD.

Clearly, Petitioner's right to due process of law was violated in this case, not only because the subject PAN was not received by Petitioner, but more importantly because the latter was not given opportunity to respond to the same PAN before the issuance of the subject FLD/FAN.

Taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes 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.

In view of the foregoing disquisitions, the Court finds no compelling reasons to justify the reversal or any modification of the Decision assailed by Respondent.

WHEREFORE, premises considered, Respondent's Motion for Reconsideration (Re: Decision promulgated on 04 December 2020), is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice