REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE Petitioner,	**CTA EB No. 1413** (CTA Case No. 8456)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
DEREK ARTHUR P. RAMSAY, Respondent.	***Promulgated:***
	JAN 05 2018 11:45 a.m.

x - x

RESOLUTION

UY, *J*.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION Re: Decision dated 22 June 2017"** filed on July 25, 2017, with respondent's **"COMMENT-OPPOSITION To Petitioner's Motion for Reconsideration To the Decision of this Honorable Court dated 22 June 2017"** filed on September 13, 2017, praying for the setting aside of the Court *En Banc*'s Decision promulgated on June 22, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated September 17, 2015 and the Resolution dated December

16, 2015, both rendered by the Court in Division in CTA Case No. 8456, are **AFFIRMED**.

SO ORDERED."

In his *Motion for Reconsideration*, petitioner reiterates that the Court in Division did not acquire jurisdiction over the case since the Final Letter of Demand (FLD) with assessment notices became final, executory and demandable when respondent failed to file a timely protest. He maintains that since there is no disputed assessment, the Court in Division has no jurisdiction over the original petition.

Petitioner likewise contends that the assessment notices attached to the FLD were served to respondent. According to petitioner, it cannot be said that respondent received the FLD only and not the assessment notice considering the presumption that the revenue officer regularly performed the official duty of serving the FLD together with the assessment notice. He submits that bare denial of respondent without any evidence does not contradict the said presumption.

Further, petitioner argues that the assessment was valid as there was demand to pay stated in the assessment notices.

Finally, petitioner stresses that the power to tax, an inherent prerogative, has to be availed of to assure the performance of vital state functions. The state will be deprived of the taxes validly due it and the public will suffer if taxpayers will not be held liable for the proper taxes assessed against them.

Upon the other hand, in its *Comment-Opposition*, respondent counter-argues that the Court has acquired jurisdiction.

Respondent contends that there was no valid service of the notices. According to respondent, in the absence of evidence that the tax notice was served, no liability will attach to the taxpayer as the assessment will never attain its finality and executory character. Respondent likewise claims that since it did not receive the tax notices, it was deprived of due process of law. Furthermore, respondent stresses that the assessment is void since there was no demand to pay within a specified period of time.

THE COURT *EN BANC*'S RULING

We deny the instant *Motion for Reconsideration*.

A careful perusal of the *Motion for Reconsideration* shows that the arguments raised in the said *Motion* are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

The Court *En Banc* shall, however, address petitioner's claim that the assessment notice was received by respondent on the presumption that the revenue officer regularly performed the official duty of serving the FLD together with the assessment notice. Petitioner further insists that bare denial of respondent without any evidence does not contradict the said presumption.

We are not persuaded.

To reiterate, jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[1] Thus, the presumption of regularity is qualified by the said jurisprudence, and thus, the burden of proof was shifted to petitioner. And since petitioner failed to discharge the said burden, We cannot conclude that respondent indeed received the subject assessment notices.

Moreover, Section 3(m), Rule 131 of the Rules of Evidence provides as follows:

> "SEC. 3. ***Disputable*** *presumptions.* — The following presumptions are satisfactory, **if uncontradicted, <u>but may be contradicted and overcome by other evidence</u>**:
>
> xxx xxx xxx
>
> (m) **That official duty has been regularly performed**;" *(Emphases and underscoring supplied)*

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[1] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 150764, August 7, 2006.

Based on the foregoing, while it may indeed be presumed that the concerned revenue officer regularly performed the official duty of serving the FLD together with the assessment notices to respondent, such presumption is not conclusive as it may be rebutted by competent and satisfactory evidence to the contrary.

As We have already ruled, the assessment notices were not received by respondent. As discussed in the assailed Decision, Our findings show the following irregularities:

1. The subject assessment notices were not attached to the FLD (refer to Exhibit "R-21")[2];

2. On the subject assessment notices, there is no indication that respondent or his duly authorized representative acknowledge the receipt of the same;[3] and

3. The date of issuance of the assessment notices and the assessment number are not indicated.

Moreover, the Final Demand Letter dated February 20, 2012 (Exhibit "R-22")[4] bolsters the fact that no assessment notice was attached to the FLD.

Clearly, the presumption of regularity was contradicted and overcome by the said evidence. Finding no compelling reason to reconsider, modify or reverse the assailed Decision, We reiterate Our ruling that indeed no assessment notice was received by respondent. Accordingly, the assessment in this case is a nullity.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[2] BIR Records, pp. 309 to 313.
[3] BIR Records, pp. 231 to 245.
[4] BIR Records, p. 314.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice