Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

FAR EAST SEAFOOD, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8909

Members:
DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:
MAR 04 2019 ; 9:19am

x---x

RESOLUTION

MINDARO-GRULLA, J.:

This resolves respondent Commissioner of Internal Revenue's (CIR) "Motion for Reconsideration (Re: Decision promulgated on 19 October 2018)", the pertinent portion of this Court's Decision dated October 19, 2018, states:

> *"In fine, respondent failed to satisfactorily discharge its burden of proving that he was able to strictly comply with the requirements set forth under Section 228 of the NIRC of 1997 and RR No. 12-99 in serving the PAN. For failure to prove the sending of the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessments made by the respondent are void.*
>
> *xxx xxx xxx.*
>
> ***WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php1,783,418.25, for expanded withholding tax in the amount of Php8,342,577.85, for withholding tax on compensation in the amount of Php2,092,601.57, for the value-added tax in the amount of Php16,439,108.43, and for documentary stamp tax in the amount of Php762,408.39 all inclusive of interest, surcharges, and*

> *penalties for calendar year 2010 are hereby* ***CANCELLED*** *and* ***SET ASIDE.***
>
> ***SO ORDERED."***

In assailing this Court's Decision, respondent CIR asserts that the Court erred in declaring the assessments void for the alleged failure on the part of respondent CIR to prove service of the Preliminary Assessment Notice (PAN) to petitioner. Likewise, respondent CIR asserts that the Court erred in ruling that respondent CIR is not entitled to the benefit of the presumption that the PAN was received in the ordinary course of mail.

Respondent CIR argued that the PAN was served by registered mail; that the same was properly addressed; and that the postage stamp was duly prepaid and mailed as evidenced by the registry return card. Thus, respondent CIR insists that pursuant to the case of *Proctor's Services, Inc. vs. Court of Appeals*[1], such mail matter was received in the regular course of mail. Hence, respondent submits that the case of Barcelon Roxas Securities, Inc. vs. Commissioner of Internal Revenue, is not applicable as it is based on a collection case.

In addition, respondent maintains that the mere denial of the receipt of the PAN does not shift the burden of proving receipt by the addressee to the respondent as the presumption that the PAN was received in the ordinary course of mail.

Petitioner's "Manifestation", received by the Court on January 14, 2019 is noted. Petitioner avers that it filed an "Opposition (To Respondent's Motion for Reconsideration) on December 10, 2018, praying that respondent's Motion for Reconsideration be denied and the Decision dated October 19, 2018 be affirmed.

The crux of the respondent's motion is whether presentation of the Registry Return Receipts is sufficient to prove that petitioner actually received the PAN and whether the mere denial of the receipt of the PAN does not shift the burden to the party favored by the presumption (PAN was

---

[1] G.R. No. 118176, April 12, 2000.

ℒ

received in the ordinary course of mail) to establish that the subject mailed letter was actually received by the addressee.

We deny the motion.

The presumption that the notice was received in the regular course of mail is disputable subject to controversion and direct denial thereof shifts the burden to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[2] In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, [3] citing the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[4], the Supreme Court, in no uncertain terms, ruled as follows:

> *"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. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held 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 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."*

Furthermore, Registry Return Receipts must be authenticated to serve as proof of receipt of letters sent through registered mail.[5] **Receipts for registered letters and return receipts do not prove themselves**; they must be properly authenticated in order to serve as proof of receipt of the letters.[6] Under Section 13, Rule 13 of the 1997 Rules on Civil Procedure[7], it is the registry receipt issued by

---

[2] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[3] Ibid.
[4] G.R. No. 157064, August 7, 2006.
[5] Suarez vs. People, G.R. No. 172573, June 19, 2008.
[6] Ting vs. Court of Appeals, G.R. No. 140665, November 13,2000.
[7] SECTION 13. *Proof of service*. — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of

the mailing office and the affidavit of the person who mailed the letter that proves service made through registered mail. This was reiterated in Republic of the Philippines vs. Resins, Incorporated,[8] to wit:

> *"When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 13, Rule 13 of the 1997 Rules on Civil Procedure.*
>
> *xxx xxx xxx.*
>
> *OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail and that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment.* ***Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters****. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. It cannot be stressed enough that "it is the registry receipt issued by the mailing office and the affidavit of the person mailing, which proves service made through registered mail." Absent one or the other, or worse both, there is no proof of service.*
>
> *xxx xxx xxx.*
>
> *While we concede that there may be a presumption of regularity, in the ordinary course of events, that the RTC Clerk of Court sent the 17 March 1993 Judgment to the OSG, such presumption should fail when the OSG itself denies receipt. When the service of the judgment is questioned, such as in the present case, there is a need to*

---

the person mailing of facts showing compliance with Section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office**. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (*Emphasis Supplied.*)

[8] G.R. No. 175891, January 12, 2011.

> *present both the registry receipt issued by the mailing office and the affidavit of the person mailing. Since the OSG presented proof of non-receipt, it became incumbent upon Resins, Inc. to prove receipt, which Resins, Inc. failed to do." (Emphases supplied)*

Evidently, receipts for registered letters and return receipts alone do not proved that the mail matter was received by the addressee, the same must be authenticated. Thus, pronouncement of the Supreme Court on the matter in the case of *Ting vs. Court of Appeals*[9] is instructive, to wit:

> *Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do.* ***Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.***
>
> *Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. 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.*
>
> ***In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery.*** *From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. (Boldfacing supplied)*

---

[9] G.R. No. 140665, November 13, 2000.

L

In this case, the subject mail matter of Registry Return Receipt marked as Exhibit "R-8" and CIR's witness, Revenue Officer Marilou E. Cubero,[10] is insufficient to prove that respondent CIR was able to strictly comply with the requirements set forth under Section 228 of the National Internal Revenue Code (NIRC) of 1997 and Revenue Regulation (RR) No. 12-99 in serving the PAN, as said witness has no personal knowledge on whether the subject mail matter Registry Return Receipt marked as "R-8" is indeed the PAN or whether said PAN was mailed or actually delivered to the addressee or the latter's duly authorized representative since she merely sends said PAN to the Administrative Office. Likewise, respondent's protestation that actual service of the PAN is beyond its function and control, lacks merit.

To reiterate, respondent must be circumspect on the procedure and evidence needed in proving the PAN and its issuance. If by registered mail, the facts to be proved in order to raise the presumption that it was received in the regular course of mail are that said PAN was properly addressed with postage prepaid and that it was mailed. It must be authenticated. If the receipt of the PAN was denied, respondent must prove that the mailed letter (proved to be containing the PAN) was actually received by the addressee or its authorized representative.

The sending of a PAN to taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities.[11] The use of the word *shall* in subsection 3.1.2 of RR No. 12-99 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of a taxpayer's right to due process. Thus, the failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of the NIRC of 1997, as amended, shall render the assessment made by the CIR as void.[12]

---

[10] Transcript of Stenographic Note, October 11, 2016, pp. 16-32.
[11] CIR v. Metro Star Superama, Inc., G. R. No. 185371 dated Dec. 8, 2010
[12] Ibid.

h

In sum, We find that no substantial argument was raised to merit reconsideration of our Decision promulgated on October 19, 2018.

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

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice