REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

NEXT MOBILE, INC.,
Respondent.

CTA *EB* NO. 1583
(CTA Case No. 8670)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JAN 15 2018 4:07 p.m.

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R E S O L U T I O N

MANAHAN, J.:

To be resolved before this Court is petitioner's **Motion for Reconsideration (Re: Decision dated October 23, 2017)**[1] filed on November 17, 2017, seeking for the reversal and setting aside of said decision as well as the CTA Third Division's decision dated August 10, 2016 and resolution dated November 25, 2016, and rendition of a new one instead. The assailed decision denied petitioner's Petition for Review, the dispositive portion of which is quoted below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The August 10, 2016 *Decision* and November 25, 2016 *Resolution*, of the CTA Third Division in CTA Case No. 8670, are hereby **AFFIRMED**.
>
> **SO ORDERED.**

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[1] *Rollo*, CTA EB No. 1583, pp. 127-135.

Petitioner argues that this Court erred in ruling that respondent was not validly served the assessments and neither was informed of the bases of such assessment.

Petitioner argues that the service of assessment notices through registered mail is allowed under Revenue Regulation (RR) No. 12-99, as amended, and it is presumed that such notices were received by the addressee in the regular course of the mail pursuant to Section 3(v), Rule 131 of the Rules of Court and also citing the case of *Protector's Services Inc. v. CA and CIR*[2] which ruled that once it was established that the letter was mailed and properly addressed with postage prepaid, the presumption is that the letter was received by the addressee as soon as it could be transmitted to him in the ordinary course of the mails.

He asserted that respondent should be the one to dispute the presumption provided under Section 3(v), Rule 131 of the Rules of Court by contrary evidence considering that it was the respondent's unwarranted failure or refusal to claim the PAN and FAN from the Central Post Office despite being notified thereof as testified by the Head of Records Unit of the Office of the Post Master, Central Post Office. The latter testified that the guard at the respondent's building refused to receive the letter.

Further, petitioner argues that the right to issue an assessment against the respondent has not yet prescribed as long as the release of the demand letter or assessment notice is effected before prescription sets in, hence, such assessment is deemed received by the taxpayer even if the actual receipt was made after the prescriptive period citing the case of *Republic v. de Guzman*[3] and *Basilan Estates v. CIR.*[4]

Although there are no new matters raised in petitioner's arguments in his motion since they have all been discussed and properly disposed of already by the assailed decision, We shall reiterate the disquisition of the instant case.

As cited in the assailed decision, it is true under Section 3(v), Rule 131 of the Rules of Court that when a letter was duly directed and mailed, it is presumed that it was received in

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[2] G.R. No. 118176, April 12,2000.
[3] 5 SCRA 990.
[4] 21 SCRA 17.

the regular course of the mail. However, this presumption is merely a disputable presumption, hence, when the party who is supposed to receive said letter denies that it actually received such, that presumption is destroyed. Thus, the burden to prove otherwise is shifted back to the one who claims that it directed and mailed said letter and he must show through valid evidence that indeed there was an actual receipt made by the intended person.

This is the *ratio* in the case of *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[5] which was cited in the assailed decision, to wit:

> In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.** (*Emphases supplied*)

Petitioner's argument that it is the respondent that should dispute said presumption by contrary evidence is totally inconsistent with the *ratio* of the abovementioned case as the *ratio* in *Protector's case* is already modified by it, which is the most recent case regarding the matter on service of letter through registered mail.

Petitioner's witness, Mr. Armando C. Macatangay, testified that he did not have evidence showing that respondent received the assessments, which were sent by registered mail because he did not receive the Registry Return Card which is supposed to be attached to the said letter.[6] This admission made by petitioner's witness only validated the complaint made by the respondent in its letter sent to petitioner on July 24, 2012 questioning its receipt of 1st Notice for collection but not the Notice of Informal Conference (NIC),

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[5] G.R. No. 157064, August 07, 2006.
[6] *Rollo*, Decision dated August 10, 2016, pp. 30-32.

the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN).

Petitioner should have presented a contrary evidence during the trial that respondent indeed actually received the said letter. However, instead of showing evidence that respondent actually received said letter, petitioner adduced as its evidence the certification from the Post Master of Central Post Office and testified that the guard at the respondent's building refused to receive the letter, hence, they merely notified the respondent. Such fact only shows that indeed said letter did not come into respondent's possession, hence, it has no opportunity to know what it contains.

Petitioner also did not adduce any evidence that the refusal of the alleged guard was indeed unwarranted nor did it present proof that the guard at the respondent's building has the authority to receive such kind of letter or communication on behalf of the respondent, a corporate entity. In the absence of said authority, the function or responsibility of said guard is only to protect the asset of the corporation and the safety of its employees and officials.

As to petitioner's argument that the right to issue an assessment against the respondent has not yet prescribed because the release of the demand letter or assessment notice was made before prescription sets in, such reliance is totally misplaced. The ruling in the *Barcelon case* finds application in the instant case, to wit:

> Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. **At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive**, even beyond the prescriptive period, **the assessment notice which was timely released, mailed and sent**. (*Emphasis supplied*)

For the presumption, i.e., that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period, to apply, such letter or notice must be <u>actually</u> received by its intended party.

However, as proven during the trial of the instant case, petitioner failed to adduce any evidence that respondent indeed actually received the required assessment notices.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated October 23, 2017)** is hereby **DENIED** for lack of merit. Consequently, the October 23, 2017 *En Banc's* Decision as well as the CTA Third Division's decision dated August 10, 2016 and resolution dated November 25, 2016 are hereby **UPHELD** and **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice