REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**CTA Crim. Case No. O-660** (Violation of Section 255 in rel. to Secs. 253(d) and 256 of the NIRC of 1997 as amended by REP ACT 8424
-versus-	Members:
JOSE EDUARDO C. DELGADO, DELBROS, INC., CBW 124 District, 888 Delbros Avenue, Pascor Drive, Parañaque City, *Accused.*	**DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.* Promulgated: FEB 17 2020 9:26a

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RESOLUTION

MANAHAN, *J.*:

On October 23, 2019, the Court acquitted accused Jose Eduardo C. Delgado and Delbros, Inc. of the charges brought in CTA Crim. Case No. O-660 involving the alleged failure to pay Delbros, Inc.'s internal revenue tax liabilities for taxable year 2008.

On November 13, 2019, the Court received plaintiff's *Motion for Reconsideration on the Civil Aspect of the Decision,* which was posted on November 7, 2019. On December 17, 2019, the Court received accused's *Opposition/Comment (Re: Plaintiff's Motion for Reconsideration on the Civil Aspect of the Decision dated 23 October 2019),* which was posted on December 6, 2019.

Plaintiff argues that the BIR's right to collect is based on a valid assessment that is final, executory and demandable. Plaintiff states that accused Jose Eduardo C. Delgado and Delbros, Inc. are required to pay the deficiency income tax and value-added tax liabilities of Delbros, Inc. for taxable year 2008. Plaintiff further argues that the Preliminary Assessment Notice

(PAN), Formal Letter of Demand with Details of Discrepancies and the Final Assessment Notice (FLD/FAN) were served upon the accused, who still failed and refused to pay the said tax liabilities. Plaintiff further argues that these notices were sent to Delbros Inc.'s registered address at Delbros Building, Atlanta Street corner 17th and 18th Streets, Port Area, Manila, and that this was the registered address per the BIR's Integrated Tax System (ITS) when the 2008 tax assessment notices were issued. Plaintiff states that Delbros, Inc. is duty bound to update its registration status when it transferred business to its address at #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City.

In his Comment/Opposition, accused reiterates that the assessments are void because: (1) Delbros, Inc. did not receive the PAN, FLD and FAN; (2) no letter of authority (LOA) was issued for revenue officer Minda A. Cayago and group supervisor Marvin C. Sevilla; and (3) the assessments were issued beyond the three (3) year prescriptive period.

Plaintiff's motion has no merit.

It is reiterated that the PAN and FLD/FAN were sent to accused Delbros, Inc. via registered mail to Delbros Bldg., Atlanta St. cor. 17th and 18th Sts., Port Area, Manila. However, the prosecution failed to prove that the said notices were actually received by the accused. No registry return cards were offered in evidence, as testified to by the prosecution's witness:

JUSTICE DEL ROSARIO

Just point of clarification Mr. Nacorda. Since you testified on the basis of records, would you now *(sic)* based on records whether the return card was actually received by your office. The return card of the mail matter that was sent to the Accused in this case.

MR. NACORDA

No return card bearing return by the Post Master, your Honors.

JUSTICE DEL ROSARIO

I see. So, let's clarify that. So, with respect to the Preliminary Assessment Notice that was sent to the Accused supposedly pertaining to registry receipt 921761, is that the number kindly check? Or is it 919143, you have your Judicial Affidavit? There's so many stamp mark here.

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

The ones sent to Delbros is what particular registry receipt number in so far as the Preliminary Assessment Notice is concerned? Is it 919143?

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

So, in so far as that mail matter is concerned, there was no registry return card that the BIR eventually received?

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

Now, with respect to the Final Assessment Notice, this is your Exhibit "P-42", do I understand that there was also no registry return card that was eventually received by the BIR?

MR. NACORDA

Yes, your honors.[1]

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[1] TSN, Hearing on July 11, 2018, pp. 11-12.

Considering the failure to prove receipt of the PAN and FLD/FAN, it cannot be considered a valid assessment which would give rise to an obligation to pay the alleged deficiency taxes. Thus, there can be no conviction for willful failure to pay the deficiency taxes arising from the said assessment.

As to the accused's civil liability, there can be no deficiency tax liabilities due arising from a void assessment.

WHEREFORE, plaintiff's *Motion for Reconsideration on the Civil Aspect of the Decision* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice