REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AA COMMERCIAL,
Respondent.

CTA EB No. 1476
(CTA Case No. 8290)

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

Promulgated:
JAN 24 2019 4:10pm

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is the "Motion for Reconsideration" of petitioner Commissioner of Internal Revenue (CIR) filed on June 28, 2018 asking the Court *En Banc* to reconsider its Decision dated June 11, 2018 on the following grounds:

1. The Court erred in ruling that the deficiency assessments against petitioner for CY 2006 are null and void for lack of due process; and

2. The Court erred in ruling that petitioner's right to issue any deficiency income tax, VAT, EWT assessments against respondent for CY 2006 has already prescribed.

In a Resolution dated August 6, 2018 the Court *En Banc* ordered respondent to file its Comment.

On September 10, 2018, within the extended period granted by the Court, respondent filed its Comment arguing that no new matters were raised to warrant a modification, much less a reversal, of the Court's earlier findings and conclusion, and that the motion is pro-forma. Moreover, respondent argues that the grounds relied upon by petitioner are devoid of any legal or factual merit.

After considering the arguments of both parties, it is apparent to this Court that, indeed, the arguments raised by the CIR in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated June 28, 2016 and the Resolution dated June 7, 2016 of the Second Division in CTA Case No. 8290. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated June 11, 2018.

Petitioner essentially argues that the requirements of Due Process have been complied with as the subject assessments were sent by registered mail to the address of respondent in Quezon City, but were refused receipt by the security guard who informed the letter carrier that the respondent had moved out of the premises. As the notices were sent to the respondent's address on file with the BIR and the evidence presented does not give any information whether respondent duly notified the BIR of its change of address pursuant to the requirements of Revenue Regulations (RR) No. 12-80, the constructive service to respondent's last known address must be held valid.

However, the records show that the assessment notices that were sent via registered mail to respondent's address at No. 1172 Bo. Unang Sigaw, EDSA, Balintawak, Quezon City were returned to sender. Respondent also manifested that it continues to hold office, accept mails and correspondences in its Balintawak Office and this has been testified to by its witness, Ms. Mary Grace Pascua-Tapia in her Sworn Statement dated January 17, 2014.[1]

Ms. Pascua-Tapia testified that the administrative office, including the offices of the Company's officers, were transferred to their Makati office, but that Accounting Department continued to hold office in their Balintawak Office. She also surmised that the security guard on duty who had informed the letter-carrier that the company "moved out" was a reliever who was not particularly informed about the Company's situation and was not aware that the Company had authorized the guard-on-duty to receive any letter on the company's behalf.

Records also show that respondent received three (3) documents relating to the subject assessments at their Balintawak Office, namely, the Post Reporting Notice (PRN) received on June 25, 2009[2], the Preliminary

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[1] Respondent's Supplemental Formal Offer of Evidence dated June 2, 2014; CTA Resolution dated June 28, 2012.
[2] Exhibit 3.

Collection Notice (PCN) received on September 16, 2010[3]; and the Final Notice Before Seizure received on November 5, 2010.[4]

Given that respondent did not abandon the said address and still conducted business at their Balintawak Office, petitioner's argument falls flat. The fact that the assessment notices were not served on respondent, coupled with the testimony of Mr. Wendell Virtucio that the assessment notices were "returned to sender" still holds true. Therefore, the Court's conclusion regarding the invalidity of the assessments remains unrebutted.

Corollary to this, since respondent did not receive the PAN and the FAN, and the end of the three-year prescriptive period has long ended, petitioner's right to issue any deficiency income tax, VAT, and EWT assessments against respondent for TY 2006 has already prescribed.

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*[5], the Supreme Court clarified what Section 203 of the National Internal Revenue Code (NIRC) ultimately requires from petitioner in making assessments, *viz.:*

> "Thus, the CIR has three (3) years from the date of the actual filing of the return of from the last day prescribed by law for filing of the return, whichever is later, to assess internal revenue taxes. Here, GJM filed its Annual Income Tax Return for the taxable year 1999 on April 12, 2000. The Three (3)-year prescriptive period, therefore, was only until April 15, 2003. The records reveal that the BIR sent the FAN through registered mail on April 14, 2003, well-within the required period. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. **But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period.** GJM, however, denied ever having received any FAN." *(Emphasis supplied)*

Considering the foregoing, petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit.

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[3] Exhibit 6.
[4] *Id.*
[5] G.R. No. 202695, February 29, 2016.

SO ORDERED.

Ma. Belen S. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

J. C. Castañeda, Jr.

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice