REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ALTIMAX BROADCASTING CO., INC.,
Respondent.

CTA EB NO. 2612
(CTA CASE NO. 10044)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 11 2024 4:05

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RESOLUTION

RINGPIS-LIBAN, ***J.*:**

For Resolution is petitioner's *Motion for Reconsideration (Decision dated 03 October 2023)* filed via LBC on October 19, 2023, with respondent's *Comment (Re: Motion for Reconsideration dated October 18, 2023)* filed on November 14, 2023.

Petitioner states that the taxpayer's right to due process was *not* violated since the Preliminary Assessment Notice (PAN) was mailed to it and such fact was established with Registry Receipt No. RD 674 559 028 ZZ. The same is true with the Final Assessment Notice (FAN), through Registry Receipt No. RD 663 033 837 ZZ. Petitioner, repeating its previous position,[1] again cites the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[2]

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[1] *Petition for Review, Rollo*, pp. 7-10.
[2] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Respondent taxpayer submits, on the other hand, that the presentation of the registry receipts is insufficient, without further proof that the PAN and FAN were served to it in observance of the due process requirements in Section 228 of the Tax Code, as amended.

The motion lacks merit.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc*,[3] the Supreme Court found that the CIR's total disregard of due process rendered the identical PAN, FAN, and Collection Letter null and void, and of no force and effect. It stressed that while the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.

Respondent's arguments are well taken in the light of the Supreme Court's holding in *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[4] which upheld the cancellation of the deficiency tax assessment by the Court of Tax Appeals and ruled that:

> "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.
>
> In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. xxx." (*Citations omitted and underscoring supplied*)

It must be recalled that while petitioner was able to prove that it mailed both the PAN and the FAN, petitioner admitted that they were mailed to the *old* address that was already *vacated* by the taxpayer. As a consequence, the assessment notices were never *actually* received by the taxpayer, in violation of due process guaranteed under Section 228.[5]

[3] *Id.*
[4] G.R. No. 157064, August 7, 2006.
[5] Decision, *Rollo*, pp. 96-102.

A reiteration of petitioner's arguments, which have already been passed upon in the assailed decision, does not convince the Court to take a contrary stand on the very same issues.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (Decision dated 03 October 2023)* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice