REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

FORT PALM SPRING CONDOMINIUM CORPORATION, Petitioner,	**CTA CASE NO. 9999**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
HON. CAESAR R. DULAY, in his capacity as Commissioner of the Bureau of Internal Revenue, Respondent.	Promulgated: JUL 15 2024 3:52 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before the Court is respondent's **Motion for Reconsideration (Decision of 05 September 2023)** filed through registered mail on September 27, 2023 and received by the Court on October 2, 2023, with petitioner's **Comment/Opposition (to respondent's Motion for Reconsideration)** filed on March 12, 2024.

On September 5, 2023, the Court promulgated a Decision cancelling respondent's deficiency income tax and expanded withholding tax (EWT) against petitioner for lack of authority of the revenue officer to examine petitioner's books of accounts and for violation of the its right to due process of law, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, the subject PAN (whether dated February 23, 2016 or July 14, 2017), the FAN dated August 17, 2017, and the WDL dated November 21, 2018, all issued against petitioner, in the aggregate amount of Php164,382,440.05, for deficiency income tax and EWT, for the taxable year 2009, are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In his Motion, respondent's sole assignment of error is that the Court erred in granting the *Petition for Review* on the ground that the receipt of the Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) were not sufficiently established. Respondent argues that the preconditions to constitute valid service that was cited by the Court in the above Decision does not apply to service by registered mail. He expounds that in cases of registered mail, it is enough that the registry receipt issued by the Post Office shall constitute sufficient proof of mailing and shall be attached to the case docket.

On the other hand, in its Comment, petitioner points out that the Court cancelled respondent's income tax and EWT assessments not only on the basis that petitioner did not receive the subject assessments, but also due to the lack of authority of revenue officer (RO) Talib A. Muti III to examine petitioner's books of accounts. In any case, petitioner asserts that the PAN and FAN were mailed to an incomplete address, as evidenced by the fact that the subject assessments were all marked "Return to Sender" by the post office.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

Again, respondent contends that preconditions cited by the Court to constitute a valid service is not applicable to service by registered mail, specifically, that statement "*the server shall accomplish the bottom portion of the notice and that he shall also make a written report under oath before a notary public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/ barangay official/professional courier service company who received the same and such other relevant information,*" are only applicable if the service is done by ordinary mail.

The Court does not agree.

Perforce, Section 3.1.6 of Revenue Regulations (RR) No. 12-99,[1] as amended by RR No. 18-2013,[2] reads, in part, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

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[1] "SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty," dated September 6, 1999

[2] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment," dated November 18, 2013.

> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> x x x
>
> 3.1.6 ***Modes of Service.*** – **The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**
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> x x x
>
> (iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.**
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person**/barangay official/ professional courier service company **who received the same and such other relevant information. The registry receipt issued by the post office** or the official receipt issued by the professional courier company **containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**" *(Emphases and underscoring supplied.)*

From the foregoing, it is apparent that service by mail must first be done by registered mail and, if no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

Notably, the requirement that the "[t]*he server shall accomplish the bottom portion of the notice*" and *"shall also make a written report under oath before a Notary Public or any person authorized to administer oath*[s] *under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information."* does not distinguish between service by registered mail or service by ordinary mail. It is a basic rule in statutory construction that where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos.* No distinction should be made in the application of the law where none has been indicated. Courts can only interpret the law; it cannot read into the law what is not written therein.[3] As such, respondent must comply with this requirement whether the service of PAN and FAN to petitioner was made by registered mail or ordinary mail.

In addition, Section 3(v), Rule 131 of the Rules of Court, likewise provides for a **disputable presumption** that "a letter duly directed and mailed was received in the regular course of the mail." As stated, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[4]

Herein, petitioner directly denies receipt of the subject PAN and FAN, thereby shifting the burden to respondent to prove that the same were indeed received by petitioner or by its authorized representative. However, in refuting petitioner's non-receipt thereof, respondent merely asserts that the PAN and FAN were served by registered mail as shown by their respective Registry Receipt Nos. AC424784428ZZ and 054452 and both were addressed to the petitioner's registered address at 30th Street, Fort Bonifacio Global City, Taguig.

Unfortunately, the said evidence hardly suffice as proof that the said notices were indeed served on and received by petitioner or by any of its authorized representative/s. Again, the registry receipts merely proved the fact of mailing, they are merely evidence of the mail matter with the post office of the sender, but not the delivery of said mail matter by the post office to the addressee.[5] To stress, the mere presentation of registry receipts alone is insufficient to prove petitioner's receipt of the PAN and FAN.

Correspondingly, the fact of service to petitioner or its duly authorized representative of the subject PAN and FAN were never established by respondent. It is primal that the respondent's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit.

As to the issue of the lack of authority of RO Talib A. Muti III to examine petitioner's books of accounts, the Court reiterates that by not having a valid authority required to examine or reinvestigate petitioner's books of accounts, the subject deficiency tax assessments against petitioner is inescapably void. A void assessment bears no valid fruit.[6] And, considering that the assessment issued by

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3 *Paul Ambrose v. Louella Suque-Ambrose*, G.R. No. 206761, June 23, 2021.
4 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.
5 *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695 February 29, 2016.
6 *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, etseq.*, G.R. No. 215534 and G.R. No. 215557, April 18, 2016.

respondent against petitioner is void, there is no more amount to collect since a void assessment cannot be a basis for collection of deficiency tax assessment.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the Decision promulgated on September 5, 2023.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision of 05 September 2023) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice