REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-*versus*-

ROGELIO A. TAN c/o JADEWELL PARKING SYSTEMS CORP.,
Respondent.

CTA EB CRIM. NO. 055
(CTA Crim. Case No. O-449)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 05 2020 1:30 p.m.

x- -x

D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner People of the Philippines praying that the civil aspect of the case be reconsidered and that the assessment issued by the Bureau of Internal Revenue (BIR) against Jadewell Parking Systems, Inc. (Jadewell) be declared valid; and, to order respondent Rogelio A. Tan and Jadewell to pay the delinquent tax deficiencies inclusive of charges and interests.

The Facts

Petitioner People of the Philippines is represented by the Special Prosecutors/Special Attorneys duly deputized by the Department of Justice and the Office of the Solicitor General with office address at Legal Division, 5th Floor BIR Bldg. I, Solana St., Intramuros, Manila, where they may be served with summons and other court processes.[1]

Respondent Rogelio A. Tan is the President of Jadewell Parking Systems, Inc., a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.[2]

The Amended Information in CTA Crim. Case No. O-449 states:

> The undersigned accuses ROGELIO A. TAN of Violation of Section 255 in relation to Section 253(d) and 256 of the Tax Reform Act of 1997 as amended by Republic Act 8424, committed as follows:
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> That on or about December 28, 2007 and subsequent thereto, in the City of Manila, Philippines, the said accused, being then the president and responsible officer of JADEWELL PARKING SYSTEMS CORPORATION located at 1104 Masangkay St., Sta. Cruz, this City, did then and there willfully and unlawfully fails, refuses and neglects, as he still fails, refuses and neglects to pay his deficiency internal revenue tax liabilities for the year 2002 in the total amount of P9,244,801.95 under assessment notice SID-31-2002/2003/2004, despite notice and service of said assessment dated December 28, 2008, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the government of the Republic of the Philippines in the aforesaid amount of P9,244,801.95, Philippine Currency.
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> CONTRARY TO LAW.[3]

After the presentation of prosecution's evidence, respondent-accused filed his Motion for Leave to File and To Admit Attached Demurrer to Evidence,[4] which leave was granted in open court on March 1, 2018.[5]

In his Demurrer to Evidence, respondent-accused argues that the prosecution failed to present proof beyond reasonable

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[1] *Rollo*, CTA EB Crim. No. 055, Petition for Review, p. 6.
[2] *Id.*
[3] Division Docket, CTA Crim. Case No. O-449, Vol. 1, p. 131.
[4] Division Docket, Vol. 2, pp. 750-751; Demurrer to Evidence at pp. 752-778.
[5] Division Docket, Vol. 2, Order dated March 1, 2018, pp. 803-804.

doubt that he violated Section 255 of the 1997 National Internal Revenue Code, as amended (NIRC), based on the following grounds: (1) the assessment notices for deficiency taxes are void for having been issued beyond the period of assessment under the law; (2) there was no proof of mailing and receipt of the preliminary assessment notice (PAN) and final assessment notice (FAN) to the respondent-accused and to Jadewell; and (3) the actionable documents which served as basis for the instant case, namely Exhibits "P-32", "P-68", "P-69", and "P-75", were denied admission by the CTA Division.

Despite notice, the prosecution failed to comment on respondent-accused's Demurrer to Evidence.

On April 18, 2018, the CTA Division resolved the Demurrer to Evidence, as follows:

> **WHEREFORE**, premises considered, the Demurrer to Evidence filed by accused is hereby **GRANTED**. Accordingly, CTA Crim. Case No. O-449 is **DISMISSED** on the ground of insufficiency of evidence.
>
> **SO ORDERED.**[6]

The Motion for Partial Reconsideration filed by the prosecution was likewise denied in the Resolution dated June 28, 2018.[7]

On August 2, 2018,[8] the instant Petition for Review was filed before the Court *En Banc*. Petitioner argues that the BIR's right to collect is based on a valid assessment which is final, executory and demandable and which can no longer be disturbed. Petitioner states that despite the service of the FAN and corresponding Formal Letter of Demand (FLD) with Details of Discrepancies, Jadewell failed to file any administrative protest. Thus, the tax liabilities of Jadewell have become overdue and delinquent and the assessments have become final, executory and demandable. Petitioner also states that the prosecution was able to prove that the assessments were received by Jadewell in the regular course of mail.

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[6] *Rollo*, p. 26.
[7] *Rollo*, pp. 28-33.
[8] *Rollo*, Minute Resolution dated July 20, 2018, p. 4.

On October 16, 2018, respondent filed his Comment[9] stating that an assessment becomes final if the taxpayer received the assessment and failed to file the appropriate protest within the period provided by law. However, in the instant case, the prosecution was only able to prove the fact of mailing. Thus, respondent argues that the assessment notices did not became final and executory. Further, respondent states that the subject assessments are already barred by prescription.

On January 7, 2019, respondent filed his "Memorandum for the Accused",[10] while petitioner posted its "Memorandum"[11] on the same date which was received by the Court on January 15, 2019.

On February 13, 2019, the case was deemed submitted for decision.[12]

Issue

Petitioner assigns the following error:

> The right to collect of the BIR is based on a valid assessment which is final, executory and demandable and which can no longer be disturbed.[13]

Ruling of the Court

The Court will now look into the timeliness of the instant appeal, before delving into the substantive issues.

The Petition for Review was timely filed.

On July 3, 2018, petitioner received the Court in Division's Resolution dated June 28, 2018, denying its Motion for Reconsideration.[14]

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[9] *Rollo*, pp. 49-55.
[10] *Rollo*, pp. 61-73.
[11] *Rollo*, pp. 74-82.
[12] *Rollo*, Resolution dated February 13, 2019, pp. 85-86.
[13] *Rollo*, Petition for Review, p. 10.
[14] Division Docket, CTA Crim. Case No. O-449, Vol. 2, p. 832.

Pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had fifteen (15) days from July 3, 2018 or until July 18, 2018, within which to file its petition for review with the Court *En Banc*.

On July 17, 2018, petitioner filed its Motion for Extension of Time to File Petition for Review[15] praying for an extension of fifteen (15) days from July 18, 2018 within which to file the petition for review. Petitioner's Motion was granted, giving petitioner an extended period until August 2, 2018 within which to file its petition for review.[16]

On August 2, 2018, the instant Petition for Review was timely filed.

There is no compelling reason to reverse the Court in Division's findings.

Petitioner insists that the assessment is valid and has become final, executory and demandable, thus, the same can be validly enforced for collection. Petitioner states that despite the service of the FAN and FLD, respondent failed to file any administrative protest, rendering the assessment final.

On the other hand, respondent asserts that the prosecution failed to prove that the assessment was received.

Records show that the PAN[17] was issued on October 8, 2007, while the FAN/FLD[18] were issued on December 28, 2007. There are no indications therein when or whether the said notices were actually received by the respondent.

In the Demurrer to Evidence[19] filed before the Court in Division, respondent stated that there was no proof that the PAN or FAN was sent by petitioner and received by respondent.

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[15] *Rollo*, pp. 1-3.
[16] *Rollo*, p. 4.
[17] Division Docket, CTA Crim. Case No. O-449, Vol. 2, Exhibit "P-39", p. 663.
[18] Division Docket, CTA Crim. Case No. O-449, Vol. 2, Exhibits "P-46" to "P-51", pp. 671-676.
[19] Division Docket, CTA Crim. Case NO. O-449, Vol. 2, pp. 761-773.

After reviewing the records of the case and the arguments raised by the parties, the Court *En Banc* finds no reason to modify the Court in Division's findings. Neither is there any reason to compel respondent to pay the alleged deficiency taxes considering that there is no proof that the assessment was received by respondent. Thus, We quote with approval the discussion of the Court in Division, as follows:

> The accused [respondent] denied having received the PAN and the FAN. 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.
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> Review of the records reveal that the prosecution was not able to refute the accused's claim that he did not receive the PAN and the FAN. Prosecution witness Mr. Armando C. Macatangay, testified by way of judicial affidavit that his primary duty is to personally send notices of assessments and their corresponding formal demand letters including demand letters for compromise penalties to the taxpayers through registered mails. Mr. Macatangay stated that he placed the FAN in a mailing envelope addressed to the registered address of Jadewell as appearing on the assessment notices, sealed it, attached a registry return receipt/card and personally brought it to the central post office Manila and mailed them through registered mail. Thereafter, he pasted the registry receipts to the copy of the transmittal slips as proof that the documents indicated therein had already been mailed to Jadewell. However, when asked if he has proof that the FAN was actually sent to the addressee, he answered in the negative, to wit:
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>> ATTY. FALLER Q: Now, as a mailing custodian, do you have with you the return card showing that these mail matters mentioned in your judicial affidavit to taxpayer [Jadewell] had been received by the taxpayer?

MR. MACATANGAY A: No, sir.

ATTY. FALLER Q: So, you have no record at all that these notices were duly received by the taxpayer?

MR. MACATANGAY A: Yes, sir.

JUSTICE VICTORINO: How do you know that these documents you claimed have been sent were actually sent to the addressee?

MR. MACATANGAY: I just deposited it to the Central Post Office then they gave me the receipts and that the receipts I put in the transmittal of the taxpayers of our transmittal.

JUSTICE VICTORINO: You stopped there?

MR. MACATANGAY: Yes, Your Honors.

JUSTICE VICTORINO: You are not aware whether these documents that you sent were actually received?

MR. MACATANGAY: Yes, Your Honor.

JUSTICE VICTORINO: Did you not verify before going to Court whether these documents you put inside the envelope you put the address and posted were actually received?

MR. MACATANGAY: Your Honors, our proof of receipt of the taxpayer is the return card.

JUSTICE VICTORINO: Do you have the return card?

MR. MACATANGAY: We do not have the return card.

JUSTICE VICTORINO: You do not have the return card, so as of today without the return card, you are not sure whether those

> documents you sent were actually received by the addressee?
>
> MR. MACATANGAY: Yes, Your Honors, but the return card is only a piece of paper that was being grouped in bulk of mountains of paper.
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> Prosecution should have presented the registry receipt or a certification from the Bureau of Posts in order to prove mailing of the PAN and the FAN.
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> Considering the assessment notice was issued beyond the period provided by law and considering further that the prosecution failed to prove that the PAN and the FAN were sent to and received by the accused, herein accused cannot be said to have failed to pay or withhold and remit payment [of] withheld taxes – much more to have done so willfully – as required under *Section 255 of the 1997 NIRC*, xxx
>
> xxx.[20]

As to the argument that the assessment has become final, executory and demandable due to respondent's failure to file a protest, it is reiterated that an assessment does not become final and executory unless the person liable receives the assessment.[21]

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions dated April 18, 2018 and June 28, 2018, rendered in CTA Crim. Case No. O-449 are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[20] *Rollo*, Resolution dated April 18, 2018, pp. 23-25.

[21] *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G.R. No. 155541, January 27, 2004, citing *Republic v. De le Rama*, 124 Phil. 1493 (1966).

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice