REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 2396** (CTA Case No. 9484)
	Present:
- *versus* -	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
SQUARE ONE REALTY CORPORATION, *Respondent.*	Promulgated: DEC 07 2022 2:54pm

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RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is petitioner's *Motion for Reconsideration* filed on July 20, 2022 with respondent's *Comment (on the Petitioner's Motion for Reconsideration)* filed on September 6, 2022.

Petitioner prays for the reversal of the Court's Decision dated June 23, 2022, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 30, 2020 and the assailed Resolution dated November 26, 2020, all promulgated by the Third Division of this Court, are hereby **AFFIRMED**.
>
> **SO ORDERED**."

Petitioner raises the following quoted arguments in support of her Motion for Reconsideration:

> "The Honorable Court *En Banc* erred in declaring the assessments void for the alleged failure on the part of petitioner to prove service of the Final Assessment Notice/Formal Letter of Demand (FAN/FLD) to petitioner.
>
> The Honorable Court *En Banc* erred in ruling that petitioner is not entitled to the benefit of the presumption that the FAN/FLD was received in the ordinary course of mail."

Petitioner states that respondent is estopped from raising the issue of non-receipt of the FAN/FLD because all official notices such as the Letter of Authority (LOA), the Preliminary Assessment Notice (PAN), etc., were sent to its registered address at 1098 Sanciangco St., Otis, Paco, Manila, the receipt of which was acknowledged by respondent, except the FAN/FLD.

The postal registry receipt presented during trial and which forms part of the BIR Records submitted to the Court, was deemed sufficient by petitioner to prove the fact of mailing as it clearly indicated that it was properly addressed to respondent's registered address. Given this evidentiary support, petitioner maintains that it is already beyond her function and control to prove the actual service of the said mail matter to respondent.

Petitioner maintains that the presumption of regularity on the part of the personnel of the Post Office also tilts the balance of justice in her favor in resolving the issue of proper and valid service of official notices. A bare-faced denial of non-receipt of official notices by respondent without any substantial proof is seen by petitioner as insufficient to shift the burden upon her to prove valid service, hence, the presumption that a mail matter was received in the regular course of mail, remains.

Petitioner then contends that the Court *En Banc* erred in concluding that no valid assessments were issued to respondent and that the collection efforts initiated by the government are void.

On the other hand, respondent counters that petitioner did not adequately prove receipt of the FAN/FLD because it did not offer in evidence the Return Receipt or the Return Card to prove the fact of mailing and receipt of the said notices. It denies the allegation of petitioner that it did not sufficiently prove non-receipt of the FAN/FLD and recalls that it was able to present a Certification from the Postmaster dated September 23, 2016 confirming that the registered letter supposedly containing the FAN/FLD was not delivered to the addressee.

RULING OF THE COURT

We find for the respondent.

The controversy on non-receipt of official notices such as the FAN/FLD is essentially linked to the issue of due process as the law mandates the representatives of the Bureau of Internal Revenue (BIR) to inform and notify taxpayers of their alleged tax deficiencies pursuant to Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, quoted as follows:

> "SEC. 228. *Protesting of Assessment.* – **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: *Provided, however,* that a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final." (Emphasis supplied)

The due notification of the legal and factual bases of the findings of the CIR and/or his representatives (via a written assessment) on the alleged tax deficiencies of a taxpayer is consistent with the constitutional principle that no person shall be deprived of property without due process of law as succinctly but clearly enunciated by the Supreme Court in the case of

Commissioner of Internal Revenue vs. Enron Subic Power Corporation,[1] in this manner, and we quote:

> "We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts in which the assessment is made. **Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process of law.** xxx xxx xxx" (Emphasis supplied)

Proper notification of the findings of the revenue officers is also required to afford the taxpayer an opportunity to prepare an intelligent protest or appeal of the assessment or decision of the revenue officers.[2] Therefore, it is no longer uncommon for a taxpayer to raise the defense of non-receipt of tax assessment notices to challenge their validity because if proven true, such will affect their right to due process provided under the 1987 Philippine Constitution and implemented by relevant laws and regulations.

During the trial in the Court in Division, respondent insists that it did not receive the FAN/FLD dated January 13, 2016, but received instead a Preliminary Collection Letter (PCL) dated August 30, 2016, and upon inquiry from the BIR, was directed to secure a proof of receipt of notice from the Central Post Office of Manila. The Central Post Office, in turn, issued a Certification that said notice was undelivered and returned to the BIR on January 18, 2016.

The disputable presumption cited by petitioner that a letter duly directed and mailed was received in the regular course of mail,[3] applies only upon the existence of certain conditions, as aptly described by the Supreme Court in the case of *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*,[4] thus:

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[1] G.R. No. 166387, January 19, 2009.

[2] *CIR vs. Liquigaz Philippines Corporation* and *Liquigaz vs. CIR,* G.R. Nos. 215534 and 215557, April 18, 2016.

[3] " **Rule 131**
Burden of Proof and Presumptions
Section 3. *Disputable Presumptions.* The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
(v) That a letter duly directed and mailed was received in the regular course of mail."

[4] G.R. No. 225809, March 17, 2021.

> "Rule 131, Section 3 (v) of the Rules of Court provides that "a letter duly directed and mailed" is presumed to have been received by the addressee thereof "in the regular course of the mail." In *Nava vs. Commissioner of Internal Revenue:*
>
>> The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and **(b) that it was mailed**. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails. **But if one of the said facts fails to appear, the presumption does not lie**." (Emphasis supplied)

The evidence shows that the subject FAN/FLD was not delivered as affirmed by the Certification issued by the Central Post Office and was in fact returned to the BIR. The presumption that it was received by respondent in the regular course of mail, does not lie in this particular instance. Petitioner, on her part, did not present any substantial proof to contravene the evidence presented by respondent. We quote for emphasis a portion of the assailed Decision, thus:

> "We agree with the Court in Division that the above pieces of evidence failed to satisfactorily prove that the FAN/FLD were actually received by respondent and we quote with approval its assessment on their probative value, thus:
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>> "The Transmittal letters presented by respondent only prove that the FAN/FLD were forwarded to the Administrative Division and to the Post Office for mailing **but do not establish the actual mailing and receipt thereof by petitioner**.
>>
>> Further, the Court cannot give credence to the testimonies of Ma. Paz Arcilla and Benhur C. Nacorda since they were not the ones who actually mailed the FAN/FLD. xxx xxx xxx."
>
> It is well-established that if a taxpayer denies ever receiving an assessment from the BIR, the burden of proof is shifted to the BIR and it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee." (Emphasis supplied)

Finding no compelling reason to deviate from the conclusions reached by the Court in the assailed Decision, we affirm and reiterate the cancellation of the deficiency tax assessment issued against respondent for taxable year 2012.

WHEREFORE, premises considered, the petitioner's *Motion for Reconsideration* filed on July 20, 2022, is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(ON OFFICIAL BUSINESS)
MA. BELEN M. RINGPIS-LIBAN
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