REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SPOUSES JOSEPH EJERCITO ESTRADA AND LUISA P. EJERCITO, Petitioners,	**CTA CASE NO. 7847** Members:
-versus-	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
BUREAU OF INTERNAL REVENUE AND LILIAN HEFTI, IN HER CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, Respondents.	Promulgated: MAR 2 9 2016 3:12 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution are the following:

1. respondents' **Motion for Reconsideration**, filed through registered mail on December 9, 2015 and received by the Court on December 18, 2015, with petitioners' **Comment and Opposition to Motion for Reconsideration**, filed on December 28, 2015; and

2. petitioners' **Motion to Resolve**, filed on February 29, 2016.

Respondents seek reconsideration of the Decision promulgated on November 23, 2015 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition is hereby **PARTIALLY GRANTED**. Accordingly, the Deficiency Income Tax Assessment Notice No. ES-IT-1999-0680 and the Formal Letter of Demand dated June 19, 2008, and the decision dated September 26, 2008, are **REVERSED** and **SET ASIDE**. However, petitioners' prayer for costs of suit is **DENIED**.
>
> **SO ORDERED.**"[1]

Respondents raise the following arguments:

1. The audit findings existed and preceded the Sandiganbayan decision by approximately five (5) years; and

2. The fact that petitioner Joseph E. Estrada is the owner of the Jose Velarde account and the amounts of income/wealth therein need not be proved or re-litigated;

   a. the Sandiganbayan decision was judicially admitted by petitioners;

   b. the Court of Tax Appeals (CTA) is bound to take mandatory judicial notice of the Sandiganbayan decision;

   c. the CTA is bound to take mandatory judicial notice not only of the Sandiganbayan decision but relevant Supreme Court decisions as well;

   d. the findings of fact and legal conclusion of the Sandiganbayan decision are not only immutable and unalterable, such judicially admitted and mandatorily judicial noticed decision is proper evidence in this case; and

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[1] Docket, p. 987.

e. conclusiveness of judgment is applicable in this case.

On the other hand, petitioners oppose the above arguments based on the following grounds:

1. No *res judicata* or conclusiveness of judgment as between the decision in the Plunder Case and the tax assessment of the respondent;

2. There is thus no basis for the tax assessment imposed upon petitioners by respondents, as this Court correctly ruled;

3. The so-called "audit findings" based on the Letter of Authority cannot be used as basis for the tax assessment;

4. The decision in the Plunder Case cannot be taken judicial cognizance of; and

5. The arguments in the Motion for Reconsideration are mere restatements of the same arguments raised in the Memorandum.

The Court finds no cogent reason to reverse its ruling in the assailed Decision.

Tax assessment cannot be sustained if anchored merely on the findings of another agency or tribunal; when there is no independent investigation; and there is no other evidence to support the same.

Respondents' tax assessment cannot be sustained if (1) based merely on the findings of another agency or tribunal, in this case the Sandiganbayan Plunder Case Decision in Criminal Case No. 26558 (Sandiganbayan Decision), which is not in any way conclusive *as regards the issue on alleged deficiency taxes*; (2) there is no independent investigation; and (3) no other supporting evidence was presented.

Again, "the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment,' *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence*"[2].

The cause of the cancellation of the subject tax assessment is not only the absence of an independent investigation, but also the failure of respondents to introduce evidence to support the basis of their assessment, other than mere reliance on the Sandiganbayan Decision.

It is no less than the respondents' witness who confirmed that they solely relied on the Amended Writ of Execution, in relation to petitioner Estrada's Sandiganbayan Plunder Case, when they issued the FAN and did not perform any accounting work or digging of records.[3] He testified as follows:

> "ATTY. OCAMPO
> Q You said that after you received a copy of the protest from the petitioner, you held in abeyance the investigation?
>
> ATTY. JAEN
> A Yes, your Honors.
>
> ATTY. OCAMPO
> Q So, in other words, you did not, from that time ...Interrupted

[2] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005, 454 SCRA 301.
[3] Transcript of Stenographic Notes (TSN), October 10, 2012, pp. 44-45.

ATTY. JAEN
A Not the investigation, your Honors, the assessment. I stand corrected. On the assessment.

JUSTICE BAUTISTA
Mr. Jaen, your assessment was based on the Writ of Execution issued by the Sandiganbayan?

ATTY. JAEN
A Yes, your Honors.

JUSTICE BAUTISTA
So, you did not do any accounting work or digging of records? There was none?

ATTY. JAEN
None anymore, your Honors, because one of the...Interrupted

JUSTICE BAUTISTA
You only based on the Writ of Execution?

ATTY. JAEN
Yes, your Honors, because one of the issue raised in the protest, the petitioner raised the issued on the ownership of the Jose Velarde account which was then pending under criminal case in the Sandiganbayan. So, for reason of sub judice, so we inhibited ourselves.

JUSTICE BAUTISTA
So, because of that Writ of Execution issued by the Sandiganbayan, it was decided by the BIR that there was undeclared income because of the Velarde account?

ATTY. JAEN
Yes, your Honors, that's correct.

ATTY. OCAMPO
Q So, in other words, Mr. Witness, you did not conduct your own personal investigation because you already...Interrupted

JUSTICE BAUTISTA
He mentioned that a while ago, he did not.

ATTY. JAEN
A We take judicial notice in the decision of the Sandiganbayan.

JUSTICE BAUTISTA
The assessment was based on the Writ of Execution issued by the Sandiganbayan. Okay?

ATTY. OCAMPO
Q On this note, Mr. Witness, did you, as part of the investigating team ever obtain a court order against the bank for you to open first the Jose Velarde account?

ATTY. JAEN
A No, your Honors, we just depended on the decision of the Sandiganbayan.[4]

xxx xxx xxx

JUSTICE BAUTISTA
Let him explain.

ATTY. JAEN
First, we conducted, we gathered the documents from the Senate regarding the impeachment and then those documents from the Ombudsman. There was an issue on the ownership of Jose Velarde account.

[4] TSN, October 10, 2012, pp. 44-47.

JUSTICE BAUTISTA
But there was no mention of that in the affidavit. What was mentioned here in the affidavit is the Writ of Execution, amended decision.

ATTY. JAEN
Yes, your Honors. That was for the FAN, your Honors, when the Sandiganbayan has declared Joseph Ejercito Estrada as the real and beneficial owner of the Jose Velarde account.

JUSTICE BAUTISTA
That was for the FAN?

ATTY. JAEN
Yes, FAN, final assessment.

JUSTICE BAUTISTA
Final assessment.
How about the PAN?

ATTY. JAEN
The PAN was based on the documents we gathered from the Senate and from the documents...Interrupted.

JUSTICE BAUTISTA
But there was no mention of that in the affidavit.[5]

Moreover, in the respondents' Motion for Reconsideration, they admitted their failure to present before this Court the documents in support of their audit. It is not only the lack of an independent investigation that led to the cancellation of the assessment, but also respondents' failure to present evidence in support of the basis of their conclusion that there exists a tax deficiency.

Based on Section 8 of Republic Act (R.A.) No. 1125, as applied and settled in numerous rulings of the Supreme Court, the Court of Tax Appeals (CTA) is categorically described as a court of record; thus, as cases filed before it are litigated *de novo*, party-litigants shall

[5] TSN, October 10, 2012, pp. 113-115.

prove every minute aspect of their cases.[6] Consequently, it is the function of this Court to review factual issues and examine, evaluate or weigh the probative value of the evidence presented by the parties. The Court is tasked to analyze and weigh all over again the evidence already considered in the proceeding before the Bureau of Internal Revenue (BIR).

Respondents cannot invoke the principle of judicial notice so as to sidestep their non-compliance with the rules on evidence.

Let it be emphasized that the stipulated issue in this case is not exclusive to the determination of ownership over the Jose Velarde account, but more importantly, on petitioners' alleged tax deficiency. The Sandiganbayan Decision may only prove ownership of the said account. As regards the determination of deficiency tax in a tax assessment case, evidence such as the taxpayer's Annual Income Tax Returns or Certificate of Compensation Payment/Tax Withheld or proof that no return was filed, source documents, or third-party information is elementary. Surprisingly, the said vital documents were neither seen during investigation nor presented before this Court.

Even the Sandiganbayan Decision was not presented before this Court. While petitioners admitted the existence of the said Sandiganbayan Decision, they did not admit the contents of the decision. Thus, this Court cannot simply take judicial notice of the contents of the decision as well as the contents of the Sandiganbayan case without violating the general rule that "courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of other cases even when such cases have been tried or are pending in the same court and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. *Courts may be required to take judicial notice of the decisions of the appellate courts but not of the decisions of the coordinate trial courts*, or even of a decision or the facts involved in another case tried by the same court itself, *unless the parties introduce the same in evidence* or the court, as a

[6] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014, 736 SCRA 609; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008, 553 SCRA 111.

matter of convenience, decides to do so. Besides, judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory."[7]

Respondents, as party-litigants, are duty-bound to properly lay before the court the evidence they relied upon in support of their conclusion on the alleged tax deficiency, instead of imposing that same duty on the court. "Down the oft-trodden path in our judicial system, by common sense, tradition and the law, the Judge in trying a case sees only with judicial eyes as he ought to know nothing about the facts of the case, except those which have been adduced judicially in evidence. Thus, when the case is up for trial, the judicial head is empty as to facts involved and it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely."[8]

The mandate to determine the amount of deficiency taxes due a taxpayer is vested upon the BIR, being the primary agency tasked to assess and collect "all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines connected therewith"[9]. Thus, respondents' assessment of tax deficiency must be based not only on the findings of another agency, but also on their independent investigation supported by pieces of evidence.

At this juncture, it must be reiterated that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[10] Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[11]

In view of the foregoing, the Court finds no cogent reason to reverse the ruling in the assailed Decision.

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[7] *Central Azucarera De Bais Employees Union-NFL (CABEU-NFL) vs. Central Azucarera De Bais, Inc. (CAB)*, G.R. No. 186605, November 17, 2010, 635 SCRA 339.
[8] *Republic of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152375, December 13, 2011, 662 SCRA 152.
[9] Section 2 of the National Internal Revenue Code of 1997.
[10] *Collector of Internal Revenue vs. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987, 153 SCRA 665.
[11] *Ibid.*

WHEREFORE, premises considered, respondents' **Motion for Reconsideration**, filed on December 9, 2015, is **DENIED** for lack of merit. In view of the resolution of respondents' Motion for Reconsideration, petitioners' **Motion to Resolve**, filed on February 29, 2016, is now **MOOT**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice