REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

COSTNER TRADING CORPORATION,
Respondent.

CTA EB NO. 2322
(CTA Case No. 9428)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, *and*
Cui-David, *JJ.*

Promulgated:
FEB 09 2022
2:29 p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[1] dated January 3, 2020 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, in view of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency VAT assessment issued by respondent against petitioner for the period from January to June of calendar year 2013, in the total amount of ₱59,916,699.34, is **CANCELLED and SET ASIDE**.
>
> **SO ORDERED.**"

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[1] Rollo, CTA EB Case No. 2322, pp. 34-51.

and the Resolution[2] dated July 21, 2020 (assailed Resolution) of the same First Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, respondent's *Motion for Reconsideration* posted on January 29, 2020 is hereby **DENIED** for lack of merit.
>
> Accordingly, the Decision promulgated by the Court on January 3, 2020 is **AFFIRMED**.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner CIR is the duly appointed Commissioner of Internal Revenue, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent Costner Trading Corporation is a domestic corporation, duly organized under the laws of the Philippines, and registered with the Securities and Exchange Commission on August 2, 1991 with SEC Company Registration No. AS091-194-38; and with the Bureau of Internal Revenue (BIR) on June 5, 1996, with Tax Identification No. 000-064-175-000.[4]

THE FACTS

The facts of the case as found by the Court in Division are as follows:

> "On September 3, 2013, petitioner received a Letter of Authority (LOA) No. LOA- V08-2013-00000371/ SN:eLA201100053172 dated August 29, 2013, authorizing Revenue Officer Jenny Ferrera and Group Supervisor Renan Plata of Revenue Region (RR) No. 8-VAT Audit Team, to conduct an examination of petitioner's books of accounts and other accounting records for value- added tax (VAT) for the period January 1, 2013 to June 30, 2013, pursuant to BIR Revenue Memorandum Order (MRO) No. 20-2012 (Value-Added Tax Audit Program).

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[2] Rollo, pp. 53-57.
[3] Petition for Review, p. 3.
[4] Decision, p. 1.

On October 28, 2015, petitioner received a Preliminary Assessment Notice (PAN) dated October 27, 2015, together with the Details of Discrepancies from the BIR.

Subsequently, on December 22, 2015, petitioner received respondent's Formal Assessment Notice (FAN) dated December 16, 2015, together with Details of Discrepancies and Audit Result/Assessment Notice Nos. VT-ELA53172-13-15-1164, assessing petitioner for alleged deficiency VAT, with interest in the aggregate amount of ₱59,916,669.34 for the first half of calendar year 2013, *i.e.* January to June 2013, broken down as follows:

Taxable Sales per VAT Returns			P273,742,780.08
Add: Undeclared Sales (Schedule 1)			70,700,752.23
Adjusted Vatable Sales			P344,443,532.31
Output tax due (12%)			P 41,333,223.88
Less Input tax claimed per return		P32,412.137.38	
Less: Unsupported Input Tax (Schedule 2)	P31,540,405.00		
Input Tax Carried Over to Succeeding Qtr.	104,596.83	31,645,001.83	767,135.55
VAT payable			P 40,566,088.33
Less VAT Payments			541,593.11
			P 40,024,495.22
Add: Interest (07.26.13 -01-18-16)			19,892,174.12
Total Amount Due:			P 59,916,669.34

The FAN was issued and signed by BIR Regional Director of Revenue Region (RR) No. 8 – Makati, Jonas DP Amora, on behalf of respondent's predecessor, then Commissioner Kim S. Jacinto-Henares.

On January 19, 2016, petitioner filed its administrative protest (by way of Request for Reconsideration) to the assessment contained in the FAN.

Alleging inaction on the part of respondent on its administrative protest, petitioner filed before this Court the instant *Petition for Review* on August 16, 2016."[5]

On September 29, 2016, the CIR filed his Answer[6] on the Petition for Review.

[5] Decision, pp. 2-3, citations omitted.
[6] Docket, CTA Case No. 9428, pp. 288-293.

The Pre-Trial Conference of the case was held on February 9, 2017.[7]

On February 22, 2017, the parties filed their Joint Stipulations of Facts and Issues.[8] Thereafter, the Court issued the Pre-Trial Order dated March 20, 2017.[9]

As agreed upon by the parties, the issue as stated in the Joint Stipulations of Facts and Issues presented before the Court in Division is: *Whether petitioner is liable to pay Deficiency Value-Added tax assessment for the period January to June 2013 in the total amount of P59,916,669.34.*

Trial thereafter ensued wherein both parties presented their respective evidence. On December 14, 2018, respondent filed its Memorandum,[10] while the CIR failed to file his Memorandum.[11]

In the Resolution[12] dated January 11, 2019, the Court in Division deemed the case submitted for decision.

On January 3, 2020, the Court in Division rendered the assailed Decision.[13]

On January 29, 2020, the CIR filed a "Motion for Reconsideration."[14]

On March 6, 2020, the respondent filed its "Comment (to Respondent's Motion for Reconsideration)."[15]

On July 21, 2020, the Court in Division issued the questioned Resolution.[16]

On August 20, 2020, the CIR filed by registered mail a "Motion for Extension of Time to File Petition for Review."[17] The motion was received by the Court *En Banc* on September 4, 2020. In the said motion, the CIR states that he received the Court's Resolution denying the Motion for Reconsideration on July 29, 2020, and that counting fifteen days therefrom, he has until August 14, 2020 within which to file his Petition for Review; that due

[7] Ibid., p. 628-630.
[8] Ibid., pp. 634-697.
[9] Ibid., pp. 690-697.
[10] Ibid., pp. 1025-1050.
[11] Ibid., p.1051.
[12] Ibid., p. 1053.
[13] Ibid., pp. 1056-1073.
[14]. Ibid., pp.1074-1078.
[15] Ibid., 1083-1087.
[16] Ibid., pp.1093-1097.
[17] Rollo, CTA EB No. 2322, pp. 1-4.

to the imposition of Modified Enhanced Community Quarantine in Metro Manila and heavy pressure of work in equally important cases, he cannot file the Petition for Review on or before August 14, 2020. Hence, he prayed that he be given an extension of fifteen (15) days from August 19, 2020 or until September 3, 2020, within which to file his Petition for Review.

It turned out that on September 2, 2020 at 4:52 o'clock in the afternoon, the Court received an email from Atty. Yvette C. Teneframcia, with attached "Second Motion for Extension of Time to File Petition for Review" dated September 2, 2020. In the said motion, the CIR states that due to inadvertence and honest mistake, the CIR's counsel counted the reckoning period of the 15 day extension from August 19, 2020 instead of August 28, 2020; that the latter date being the 15th day of the last day to file the Petition for Review, taking into consideration the suspension of the running of the reglementary periods for filings of petitions, appeals, complaints, motions, pleadings and other court submissions before the courts from August 4 to 18, 2020. Hence, the CIR prayed for an additional period of fifteen (15) days from August 28, 2020 or until September 12, 2020 within which to file his Petition for Review.

Meanwhile on September 7, 2020, the Court *En Banc* issued a Minute Resolution[18] granting the CIR a final and non-extendible period of fifteen (15) days from August 19, 2020 or until September 3, 2020, within which to file his Petition for Review.

On September 14, 2020, the CIR filed through registered mail the instant Petition for Review.[19]

On October 22, 2020, the Court *En Banc* issued a Resolution ordering respondent to file its Comment on the Petition for Review within ten (10) days from notice.[20]

On November 6, 2020, the Court *En Banc* received respondent's "Transmittal" with attached copy of the Comment to the Petition for Review, Affidavit of Service and Print out of email transmission dated November 5, 2020.[21]

The Court *En Banc* issued a Resolution[22] noting respondent's "Comment (To the Petition for Review)," and referring the case to mediation in the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for initial appearance on December 14, 2020 at 1:30 o'clock in the afternoon.

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[18] Rollo, CTA EB No. 2332, o. 12.
[19] Ibid., pp. 18-32, with Annexes.
[20] Ibid., pp. 63 to 64.
[21] Ibid., pp. 65-88.
[22] Ibid., pp. 90-91.

On December 18, 2020, the Court *En Banc* received PMC-CTA Form 6-No Agreement to Mediate[23] stating that the parties decided not to have their case mediated by the Philippine Mediation Center Unit – CTA.

On February 9, 2021, the Court *En Banc* issued a Resolution[24] submitting the instant case for decision.

THE ISSUE

The main issue in this case is ***whether or not the Court in Division erred in cancelling the deficiency VAT Assessment issued by the CIR against respondent for the period from January to June of calendar year 2013, in the amount of P59,916,699.34.***

THE ARGUMENTS

The CIR contends that the Court in Division erred in cancelling and setting aside the deficiency VAT assessment issued against respondent for the period from January to June 2013; that respondent is estopped from claiming that the assessment must be rendered void because of lack of authority of the Regional Director of Revenue Region No. 8 to issue the subject assessments; that respondent never raised the invalidity of the Final Assessment Notice (FAN) for having been issued beyond the authority of the Regional Director of Revenue Region No. 8 at the earliest opportunity when respondent filed its administrative protest to the FAN requesting for re-investigation on January 19, 2016; and that there is no record that respondent informed the Revenue District Officer of Revenue District Office No 47 in East Makati that it had changed its office address from Revenue District Office No. 47 in East Makati to Revenue District Office No. 29 in Manila, in accordance with the requirement of Revenue Regulation (RR) No. 12-85.

On the other hand, respondent counter argues that the issuance of FAN was invalid because it was issued beyond the authority of the Regional Director of Revenue Region No. 8; that proper procedures were followed by respondent in the change of business address; that since a new BIR Certificate of Registration was issued to respondent by RDO-Manila, it presupposes that it followed the procedures mandated by Section 236 of the Tax Code. Hence, the subject deficiency VAT assessment was rightfully declared void by the Court in Division.

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[23] Ibid., p. 92.
[24] Ibid., pp. 94-95.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On January 14, 2020, the CIR received the Decision of the Court in Division. On January 29, 2020, the CIR filed a Motion for Reconsideration of the said Decision. On July 21, 2020, the Court in Division issued the assailed Resolution denying the CIR's motion. Said Resolution was received by the CIR on July 29, 2020.

From receipt of the said Resolution on July 29, 2020, the CIR has until August 13, 2020 within which to file the Petition for Review. On August 20, 2020, petitioner filed by registered mail, a "Motion for Extension of Time to File Petition for Review." Said motion was received by the Court *En Banc* on September 4, 2020. On September 7, 2020, the Court *En Banc* issued a Minute Resolution granting petitioner's motion.[25]

On September 2, 2020, the CIR filed a "Second Motion for Extension of Time to File Petition for Review"[26] stating that the original period within which to file the Petition is within 15 days from July 29, 2020 to August 28, 2020 (excluding the period of suspension of reglementary period of filing from August 4 to 18, 2020). Hence, he prayed that he be given consideration to file the present petition from August 28, 2020 or until September 12, 2020.

Records show that on September 14, 2020,[27] the CIR filed by registered mail the instant Petition for Review, which was received by the Court on September 17, 2020. Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful review of the CIR's arguments and the records of the case, the Court *En Banc* finds no reason to reverse the Decision and Resolution of the Court in Division. The CIR merely rehashed the very same arguments in his previous pleadings all of which have been thoroughly discussed and passed upon by the Court in Division in the assailed Decision and assailed Resolution. Nonetheless, the Court *En Banc* shall discuss the issues raised by the parties to stress the salient points in the assailed Decision and assailed Resolution.

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[25] Rollo, p. 12.
[26] Rollo, p. 13-17.
[27] The last day to file the Petition for Review was on September 12, 2020, a Saturday.

Whether or not the Court in Division erred in cancelling the subject assessments due to lack of jurisdiction of Revenue Region No. 8- Makati

The petitioner insists that the subject assessments were valid because they were issued within the authority of Regional Director of Revenue Region No. 8 on behalf of the Commissioner of Internal Revenue.

Contrary to the CIR's claim, the Court *En Banc* finds that the assessments were issued without the requisite authority of Revenue Region No. 8 to examine and issue the subject assessments. At the time the PAN and FAN were issued by RR No. 8-Makati, herein respondent was already within the jurisdiction of RR No. 6-Manila. Respondent transferred its registration to RR No. 6-Manila on January 29, 2015.[28]

The Court *En Banc* affirms the findings of the Court in Division that respondent duly informed the CIR of its change of address from Makati to Manila.

In the assailed Resolution, the Court in Division ruled as follows:

> "Section 236 (D) of the 1997 National Internal Revenue Code (NIRC), as amended, confers the obligation of taxpayers to inform the tax authorities of change of address, and we quote:
>
> 'Section 236. *Registration Requirements.* –
>
> *(D) Transfer of Registration.* – In case a registered person decides to transfer his place of business or his head office or branches, **it shall be the duty to update his registration status by filing an application for registration information update in the form prescribed therefor.**' (emphasis supplied)
>
> The prescribed form specified in the aforequoted provision is properly identified as the Application for Registration Information Update or BIR Form 1905 which the taxpayer needs to file with the RDO having jurisdiction over the original address.
>
> From the perspective of proper governance, a taxpayer is mandated to inform the BIR of his change of address, otherwise

[28] Exhibit "P-23-D."

the revenue officers of a particular revenue region and RDO cannot be faulted for (continuously) exercising their taxing powers over said taxpayers.

Records show that petitioner[29] duly informed respondent[30] of its change of address from Makati to Manila and was in fact given by the BIR a new Certificate of Registration (COR) (Form 23030 indicating the new address. The photocopy of the new COR was presented by petitioner as Exhibit "P-23-D" dated January 29, 2015 signed by Ms. Teresita Y. Lumayag of RDO No. 29, RR No. 6-Manila. So at the time the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) dated October 27, 2015 and December 16, 2015, respectively, were issued by the Regional Director of RR No. 8-Makati, petitioner already formally transferred its registration from RR No.8-Makati to RR No. 6-Manila. Respondent could not feign ignorance of the transfer as the new COR of petitioner dated January 29, 2015 (and issued by the BIR) bears its new address and RDO.

The principle of estoppel relied upon by respondent finds no application in a case where petitioner duly satisfied all the compliance requirements in notifying the BIR of its change of address and even securing a new COR from the latter which serves as an official notice of change of taxing jurisdiction. The doctrine of estoppel is based on public policy, fair dealing, good faith and justice and its purpose is to forbid a party to speak against its own act or omission, representation or commitment to the injury of another to whom the act, omission, representation or commitment was directed and who reasonably relied thereon. Petitioner already fulfilled its duty to inform the tax authorities of it change of address, hence it could not be said that it performed acts contrary to the same."[31]

Respondent complied with the procedures for the change of address of a business, consequently, it is now within the jurisdiction of Revenue Region No. 6-Manila. Therefore, the subject assessment issued against respondent by Revenue Region No. 8-Makati is void.

As correctly ruled by the Court in Division in its Decision:[32]

"As intimated earlier, LOA No. LOA-V08-2013-00000371/SN: eLA201100053172 dated August 29, 2013 issued

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[29] Respondent herein.
[30] Petitioner CIR herein.
[31] Resolution, pp. 3-5. Citations omitted.
[32] Decision, pp. 15-18. Citations omitted.

> by RR No. 8-Makati, could not be given effect to petitioner as of date of the latter's transfer of registration to RDO No. 29, since this RDO is beyond the jurisdiction of RR No. 8 – Makati. Consequently, no valid authority to examine petitioner exists when the subject FAN was issued against, and received by petitioner. Not having authority to examine petitioner in the first place, the assessment issued by RR No. 8-Makati is inescapably void.
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> Moreover, even granting that the said FAN is valid, it cannot likewise be given effect by RR No. 8–Makati, since, petitioner is already beyond the jurisdiction thereof, when the same FAN was received by petitioner on December 22, 2015. In other words, RR No. 8- Makati is no longer empowered to issue the said FAN as of such date.
>
> Nevertheless, it must be pointed out that this Court cannot consider petitioner's open/pending case before RR No. 8-Makati as prescribing within six (6) months as of the date of request for transfer, so as to call for the operation of the rule under RMO No. 11-2005 in case of prescribing cases. This is simply because there I no indication that it was indeed *prescribing within the said period.*"
>
> *xxx* *xxx* *xxx*
>
> *xxx*. Records show that petitioner filed its Quarterly VAT Return for the 1st quarter of 2013 on April 25, 2013; while the 2nd quarter on July 25, 2013. Pursuant to Section 203 of the NIRC of 1997, respondent had until April 25, 2016 and July 25, 2016, respectively, within which to assess petitioner of deficiency VAT for the said quarters. Thus, as between date of petitioner's transfer of registration on January 29, 2015 and the respective end date of the prescriptive periods to assess petitioner for VAT for the period from January 1, 2013 to June 30, 2013, there are more than six (6) months before the end of the said three-year period to assess petitioner."

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED for lack of merit**. Accordingly, for being void, the subject assessments issued against respondent Costner Trading Corporation for the period from January to June of calendar year 2013 in the total amount of ₱59, 916,699.34 is **CANCELLED** and **SET ASIDE**.

Consequently, the CIR is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from respondent while the case is pending appeal.

SO ORDERED.

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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