REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ENCORE RECEIVABLE MANAGEMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10062

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

DEC 0 6 2023, 2:30PM

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DECISION

REYES-FAJARDO, *J.*:

This addresses the Petition for Review filed on April 8, 2019,[1] by Encore Receivable Management, Inc., which aims to nullify the Bureau of Internal Revenue (BIR)'s Preliminary Collection Letter (PCL) dated June 6, 2018 and Final Notice Before Seizure (FNBS) dated June 18, 2018, anchored on the alleged void deficiency tax assessments covering Calendar Year (CY) 2014.

FACTS

Petitioner is the Philippine branch office of Encore Receivable Management, Inc., a company incorporated and domiciled in the United States of America (USA), with principal office address at 5/F Glorietta 5, IT Bldg. East Drive, Ayala Center, Makati City.[2] It is licensed to transact business in the Philippines by the Securities and

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1 Docket (Vol. I), pp. 10-34.

2 Par. (I)(a), Joint Stipulation of Facts and Issues (JSFI). *Id.* at pp. 511-512.

Exchange Commission (SEC), with Company Registration No. FS200508007.[3]

Respondent Commissioner of Internal Revenue is the duly appointed official of the BIR, empowered to assess and collect all internal revenue taxes, fees, and charges, along with the enforcement of all forfeitures, penalties, and fines connected therewith, including the approval of compromise settlement. He may be served with summons, notices, and court processes at the Legal Division of Revenue Region No. 8, located at the 2nd Floor, BIR Building, 313 Gil Puyat Avenue, Makati City.[4]

On July 30, 2015, petitioner received[5] a Letter of Authority (LOA) No. eLA201200033853 dated July 27, 2015, issued by Regional Director Jonas DP Amora, authorizing Revenue Officer Armina Anwar (RO Anwar) and Group Supervisor Elizabeth Arias (GS Arias) to examine its books of accounts and other accounting records for CY 2014.[6]

On November 6, 2017,[7] petitioner received the BIR's Preliminary Assessment Notice (PAN)[8] dated November 2, 2017, containing its projected deficiency taxes, plus interests, for CY 2014, tabled below:

Tax Type	**Amount**
Withholding Tax on Compensation (WTC)	₱30,069,180.52
Expanded Withholding Tax (EWT)	18,494,790.79
Final Withholding Tax (FWT)	687,955.11

On December 7, 2017, the BIR issued the Formal Assessment Notice, with Details of Discrepancies and Assessment Notices (FAN), assessing petitioner for deficiency taxes, plus interests, for CY 2014, broken down as follows:[9]

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3 Par. I(c), JSFI. Docket (Vol. I), p. 512; Exhibit "P-1." Docket (Vol. II), pp. 817-850.
4 See Par. I(b), JSFI. Docket (Vol. I), p. 512.
5 Par. I(d), JSFI. *Ibid.*
6 Exhibits "R-1" and "R-1-a." BIR Records, p. 5.
7 See page 24, Transcript of Stenographic Notes (TSN) of Hearing held on June 23, 2022.
8 Exhibit "P-5," Docket (Vol. II), pp. 852-854; Exhibit "R-3," BIR Records, pp. 527-529.
9 Exhibits "R-5," "R-6," "R-7," "R-8," and "R-9." BIR Records, pp. 543-549.

Tax Type	Amount
WTC	₱30,288,282.81
EWT	18,629,555.06
FWT	692,967.97

On June 11, 2018, petitioner received the BIR's PCL dated June 6, 2018,[10] requesting the latter to pay deficiency taxes on WTC, EWT, and FWT, for CY 2014, in the total amount of ₱49,610,805.84, detailed below:

Tax Type	Basic	Interest	Total
WTC	₱19,041,032.08	₱11,247,250.73	₱30,288,282.81
EWT	11,711,656.21	6,917,898.85	18,629,555.06
FWT	435,641.25	257,326.72	692,967.97
Total	**₱31,188,329.54**	**₱18,422,476.30**	**₱49,610,805.84**

On June 26, 2018, petitioner received the BIR's FNBS dated June 18, 2018,[11] granting it the last opportunity to settle its above-stated tax liabilities.

On July 11 [12] and 26, [13] 2018, petitioner filed separate administrative protests (Requests for Reinvestigation),[14] challenging the BIR's PCL and FNBS, respectively. In both administrative protests, petitioner argued that the tax assessments issued against it for CY 2014, from which such collection letters were based, are void, because: (1) it never received the FAN for said year; and, (2) the BIR's right to assess taxes is barred by prescription, and are bereft of merit.

On September 10, 2018, petitioner filed[15] its letter of even date with the BIR, submitting pertinent documents in support of its administrative protest on the PCL.[16]

On April 8, 2019, petitioner filed a Petition for Review, docketed as CTA Case No. 10062.[17]

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10 Exhibit "P-6," Docket (Vol. II), p. 855; Exhibit "R-12," Docket (Vol. I), p. 43.

11 Exhibit "P-8," Docket (Vol. II), p. 866; Exhibit "R-13," BIR Records, p. 560.

12 Par. (I)(e)(1), JSFI. Docket (Vol. I), p. 512.

13 Par. (I)(e)(3), JSFI. *Ibid.*

14 Request for Reinvestigation against the PCL - see Exhibit "P-7." Docket (Vol. II), pp. 856-865.
Request for Reinvestigation against the FNBS – see Exhibit "P-9." *Id.* at pp. 867-876.

15 Par. (I)(e)(2), JSFI. Docket (Vol. I), p. 512.

16 Exhibit "R-14," BIR Records, pp. 571 to 583; Par. e (2), JSFI, Docket (Vol. I), p. 512.

17 *Supra* note 1.

On July 29, 2019, respondent filed his Answer with Motion to Dismiss,[18] to which petitioner filed its Reply/Opposition on August 27, 2019.[19]

Under Resolution dated December 20, 2019, respondent's Motion to Dismiss, embodied in his Answer was denied, for lack of merit.[20]

On January 28, 2021, the Pre-Trial Conference was held, whereby the parties undertook to submit a Joint Stipulation of Facts and Issues, embodying the matters in said proceeding. Additionally, we set the dates for the commissioner's hearing, for the marking of the parties' respective evidence, along with the trial dates for the presentation of their respective witnesses.[21]

On February 11, 2021, the parties submitted, [22] and we approved, [23] their Joint Stipulation of Facts and Issues (Between Petitioner Encore Receivable Management, Inc. and Commissioner of Internal Revenue).

On May 26, 2021, a Pre-Trial Order was issued.[24]

Trial followed.

Petitioner presented: (1) Ms. Amie A. Naz;[25] (2) Ms. Merdilyn A. Angeles;[26] (3) Mr. Roland Ngo;[27] and (4) Independent Certified Public Accountant Madonna Mia S. Dayego,[28] as its witnesses.

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18 Docket (Vol. I), pp. 180-188.

19 *Id.* at pp. 195-201.

20 *Id.* at pp. 213-218.

21 Order dated January 28, 2021. *Id.* at pp. 501-503.

22 *Id.* at pp. 511-515.

23 Resolution dated February 24, 2021. *Id.* at p. 562.

24 *Id.* at pp. 601-622.

25 Exhibits "P-50" and "P-53," *id.* at pp. 426-446, and 633-637, respectively. Identified in the Hearing held on June 10, 2021, see Order of even date, Docket (Vol. II), pp. 659-661.

26 Exhibit "P-51," Docket (Vol. I), pp. 447-452; Likewise identified in the Hearing held on June 10, 2021, see Order of even date, Docket (Vol. II), pp. 659-661.

27 Exhibit "P-52," Docket (Vol. I), pp. 454-461; Exhibit "P-81," Docket (Vol. II), pp. 722-729. Identified in the Hearing held on July 22, 2021, see Order of even date, Docket (Vol. II), pp. 781-782.

28 Exhibit "P-82," Docket (Vol. II), pp. 666-690; Identified in the Hearing held on July 22, 2021, see Order of even date, *id.* at pp. 781-782.

On October 27, 2021, petitioner posted its Formal Offer of Evidence,[29] to which respondent posted his Comment thereto on November 2, 2021.[30]

By Resolution dated April 18, 2022,[31] the pieces of evidence offered by petitioner were admitted, save for Exhibits "P-56," "P-57," "P-58," "P-59" and "P-59-a," as these documents were not listed in the Pre-Trial Order dated May 26, 2021. Petitioner rested its case.

Respondent presented Group Supervisor Marivel G. Bello (GS Bello)[32] as his sole witness.

On July 7, 2022, Respondent's Formal Offer of Evidence (With Attached Respondent's Documentary Exhibits) was posted,[33] to which petitioner filed its Comment on July 20, 2022.[34]

By Resolution dated September 20, 2022,[35] the pieces of evidence offered by respondent were admitted.

Through Minute Resolution dated December 7, 2022,[36] this case was submitted for decision, considering the Memorandum for Respondent,[37] and petitioner's Memorandum,[38] respectively filed on October 28, 2022, and November 2, 2022.

ISSUE

The issues[39] posed by the parties may be condensed into two (2) questions:

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29 *Id.* at pp. 797-816.
30 *Id.* at pp. 1032-1039.
31 *Id.* at pp. 1045-1049.
32 Exhibit "R-17," Docket (Vol. I), pp. 524-538. Identified during the Hearing held on June 23, 2022, see Minutes thereof, Docket (Vol. II), pp. 1050-1051.
33 Docket - Vol. II, pp. 1081 to 1088.
34 *Id.* at pp. 1071-1077.
35 *Id.* at pp. 1118-1120.
36 Minute Resolution dated December 7, 2022.
37 Docket (Vol. II), pp. 1154-1164.
38 *Id.* at pp. 1121-1153.
39 Proposed Issues to be Resolved, JSFI, Docket (Vol. I), p. 513.

First. Did we acquire jurisdiction over CTA Case No. 10062?

Second. Is petitioner liable for deficiency WTC, EWT, and FWT covering CY 2014, as embodied in the PCL dated June 6, 2018, and FNBS dated June 18, 2018?

ARGUMENTS

Petitioner complains that since no FAN for CY 2014 was validly issued, let alone, received by it, the BIR violated its right to due process; hence, the BIR's PCL and FNBS, anchored thereon are void.

Petitioner further insists that the BIR's right to assess the deficiency WTC, EWT, and FWT covering CY 2014 is barred by prescription under Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended.

Granting, the BIR deficiency tax assessments for CY 2014 were timely made by the BIR, petitioner nonetheless contends that it should be exonerated from paying the same. Specifically:

> *First.* The unaccounted salaries and wages subjected by the BIR to WTC pertains to its expenses exempted from said tax, such as contributions to Home Development Mutual Fund, Social Security System, Philippine Health Insurance Corporation, taxes/government contributions, fringe benefits, filing fees relative to employee application, accrual of disability pay, Health Maintenance Organization insurance, educational assistance, and rice allowance.
>
> *Second.* The rental payments it paid to Convergys Philippines Services Corporation (CPSC), subjected by the BIR to EWT is erroneous because CPSC is a Philippine Economic Zone Authority (PEZA) registered entity, exempt from 5% EWT under pertinent revenue regulations.
>
> *Third.* The branch profits it remitted to its head office, subjected by the BIR to FWT is flawed because it is also a PEZA-registered enterprise, and the profits it remitted are related to its registered activity. For this reason, it is not liable to FWT on branch profits, pursuant to Section 28(A)(5), in relation to Section 57(A) of the NIRC, as amended.

For these reasons, petitioner declares that the cancellation of the PCL, FNBS, along with the deficiency tax assessments for CY 2014 from which they were based, are in order.

Posing a divergent view,[40] respondent ripostes that: (1) the failure of petitioner to appeal the BIR's PCL, within thirty (30) days from receipt thereof, hindered us from acquiring jurisdiction over this case; and, (2) in view thereof, the tax assessments covering CY 2014 are now immutable. On these accounts, respondent believes that dismissal of this case is warranted.

RULING

The Petition must be dismissed.

To be sure, we are aware that petitioner considered the PCL and FNBS it received on June 11, 2018[41] and June 26, 2018,[42] respectively, as the BIR's final assessment, to which it timely and respectively filed Requests for Reinvestigation on July 11, 2018[43] and July 26, 2018.[44] Petitioner then submitted supporting documents on September 10, 2018,[45] from which it counted one hundred eighty (180) days, or until March 9, 2019, for respondent to decide on its administrative protest against the PCL. *Sans* action from respondent as of March 9, 2019, petitioner counted another thirty (30) days therefrom, or until April 8, 2019 to seek judicial recourse; thus, it filed a Petition for Review[46] on April 8, 2019. Notably, the circumstances leading to said appeal were tailored after Section 228 of the NIRC, as amended, which provides in part:

> SEC. 228. *Protesting of Assessment*. – ...
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> ...

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40 Respondent's Answer with Motion to Dismiss, *supra* note 18.
41 *Supra* note 10.
42 *Supra* note 11.
43 *Supra* note 12.
44 *Supra* note 13.
45 *Supra* note 16.
46 *Supra* note 1.

> **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.**
>
> **If the protest** is denied in whole or in part, or **is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the** decision or **inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable.[47]

Yet, the procedure outlined in Section 228 of the NIRC, as amended, finds no application here. Accordingly, our jurisdiction over respondent's decision or inaction on disputed assessments recognized therein did *not* arise.

In *Allied Banking Corporation v. Commissioner of Internal Revenue (Allied Banking),*[48] it was ruled that "to be clear, [the Supreme Court is] not disregarding the rules of procedure under Section 228 of the NIRC, as implemented by Section 3 of BIR Revenue Regulations No. 12-99. **It is the Formal Letter of Demand and Assessment Notice that must be administratively protested or disputed within 30 days,** and not the PAN."

Of late, *Commissioner of Internal Revenue v. Maxicare Healthcare Corporation (Maxicare)* [49] reaffirmed said pronouncement in *Allied Banking*. *Maxicare* added that the sixty (60)-day period to submit supporting documents, conferred upon the taxpayer in Section 228 of the NIRC, as amended, only applies to a request for reinvestigation on the **FLD/FAN**:

> ... Section 228 of the NIRC explicitly sets the period for an "administrative protest of the assessment" at 30 days, and this same period is reiterated in Section 3.1.4 of RR. No. 12-99 which refers specifically to the protest to an FLD/FAN. Further still, it is the

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47 Boldfacing supplied.
48 G.R. No. 175097, February 5, 2010. Boldfacing supplied.
49 G.R. No. 261065, July 10, 2023.

> protest to the FLD/FAN which can take the form of either a request for reconsideration or a request for reinvestigation, and it is the latter which carries with it the 60-day period to submit relevant supporting documents – such an option is *not* explicitly provided with regard to the response to the PAN.
>
> It is thus abundantly clear that Section 228, when read together with RR No. 12-99 which implements it, can be properly read in only one way as regards the 60-day period for submission of relevant supporting documents: that this period refers to the protest to the FLD/FAN when the same is a request for reinvestigation and not the response to the PAN.

Allied Banking and *Maxicare* decreed that the administrative remedy of, among others, a request for reinvestigation, side by side with the period within which to submit documents in support thereof, both referred to in Section 228 of the NIRC, as amended, must be directed against the FLD/FAN received by the taxpayer. Contrariwise, if no FLD/FAN was received by the taxpayer, then said administrative remedy finds no application.

Petitioner's administrative protests before the BIR were *not* directed against the FLD/FAN. Specifically, what was being assailed by petitioner in its Requests for Reinvestigation are the BIR's *collection letters, i.e.,* PCL and FNBS, anchored on the supposed non-receipt of the FAN for CY 2014.[50] Petitioner's non-receipt of the FAN for said year, too, was tenaciously asserted in its: (1) Requests for Reinvestigation on the PCL[51] and FNBS;[52] (2) Petition for Review[53] in CTA Case No. 10062; and (3) Memorandum.[54] *Landbank of the Philippines v. Abellana (LBP)*[55] taught us that the allegation of a party in a pleading is conclusive upon him or her:

> ... an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the

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50 *Supra* note 14.
51 *Supra* note 14.
52 *Ibid.*
53 Pars. 37-50, Petition for Review. *Supra* note 1.
54 Pars. 40-49, Memorandum. *Supra* note 38.
55 G.R. No. 237369, October 19, 2022, citing *Alfelor v. Halasan,* G.R. No. 165987, March 31, 2006.

> pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.

Following *LBP*, the fact of non-receipt of the FAN for CY 2014 is conclusive upon petitioner. Congruous with *Allied Banking* and *Maxicare*, the administrative dispute machinery outlined in Section 228 of the NIRC, as amended, *i.e.*, the filing of request for reinvestigation thereto, and right to submit supporting documents within the prescribed period, along with our jurisdiction over decisions or inactions over disputed assessments denoted therein never became operative. For this reason, petitioner misguidedly used said provision in its chase of an appeal before us.

What then is the correct remedy?

Petitioner should have challenged the PCL and FNBS directly before the CTA, under the premise that it did *not* receive the BIR's FAN from which the collection letters were based. Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[56] as amended by RA No. 9282, reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue** or other laws administered by the Bureau of Internal Revenue;
> >
> > ...
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

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56 An Act Creating the Court of Tax Appeals.

> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ….
>
> …[57]

As currently formulated, our jurisdiction over respondent's decision or action embraces other matters arising under the NIRC, as amended. Among the matters specified in Section 2 of the same Code, is the BIR's authority to collect all national internal revenue taxes, fees, and charges. [58] This includes the issuance of the rules, regulations, and measures in pursuit thereof.[59] In addition, an appeal must be seasonably taken from such action, through the filing of a Petition for Review, within thirty (30) days from receipt thereof.

The BIR's PCL dated June 6, 2018, and FNBS dated June 18, 2018 were received by petitioner on June 11, 2018,[60] and June 26, 2018,[61] respectively. Both BIR letters sought to collect deficiency taxes covering CY 2014 from petitioner. Counting thirty (30) days from June 11, 2018, and June 26, 2018, petitioner had, at most, until July 11, 2018, and July 26, 2018, to respectively impugn the PCL and FNBS. *Ergo,* petitioner belatedly filed its Petition for Review on April 8, 2019,[62] depriving us of jurisdiction over CTA Case No. 10062.

To punctuate our discussion, it has been said that the party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.[63] Petitioner turned deaf to this injunction.

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57 Boldfacing supplied.

58 **SEC. 2.** ***Powers and Duties of the Bureau of Internal Revenue.*** - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts…. (Boldfacing supplied)

59 See *Commissioner of Internal Revenue v. Bank of the Philippine Islands,* G.R. No. 227049, September 16, 2020.

60 *Supra* note 10.

61 *Supra* note 11.

62 *Supra* note 17.

63 See *Herarc Realty Corporation v. The Provincial Treasurer of Batangas,* G.R. No. 210736, September 5, 2018.

WHEREFORE, the Petition for Review, filed on April 8, 2019 by Encore Receivable Management, Inc., is **DISMISSED**, on jurisdictional ground.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice