REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FORT 1 GLOBAL CITY CENTER, INC.,
Petitioner,

- versus -

HON. CAESAR R. DULAY, in his capacity as Commissioner of the Bureau of Internal Revenue,
Respondent.

CTA CASE NO. 9490
For: Assessment

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FORT 1 GLOBAL CITY CENTER, INC.,
Petitioner,

- versus -

HON. CAESAR R. DULAY, in his capacity as Commissioner of the Bureau of Internal Revenue,
Respondent.

CTA CASE NO. 9503
For: Assessment

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JAN 2 3 2020 1:00 PM

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RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is respondent's **Motion for Reconsideration (On the Decision promulgated on August 6, 2019)**, filed through registered mail on October 17, 2019, and received by this Court on October 25, 2019, with petitioner's **Comment (On the Motion for Reconsideration dated 16 October 2019)**, also filed through registered mail on November 15, 2019, and received by the Court on November 22, 2019.

In his Motion, respondent seeks reconsideration of the Decision promulgated on September 24, 2019, in cancelling his deficiency tax assessments by reason of violating petitioner's right to due process of law. The dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **GRANTED**. The PAN and FAN for taxable years 2009 and 2012, are **CANCELLED**. Accordingly, the deficiency tax assessments against petitioner amounting to ₱134,099,378.74 and ₱1,598,860,663.45, for taxable years 2012 and 2009 mentioned in the said assessment notices, as well as the FDDA dated October 13, 2016, are likewise cancelled and set aside.
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> **SO ORDERED.**"

Respondent primarily insists that the Letter of Authority (LOA), Preliminary Assessment Notice (PAN), Formal Assessment Notice (FAN) and Final Decision on Disputed Assessment (FDDA) issued for taxable years 2009 and 2012 sufficiently informed petitioner of the facts and law on which the assessments were based. He continues that the alleged improper service of the LOA, PAN, FAN, and FDDA and the lack of authority of the individual who received them were only raised in this Court for the first time. As such, the same should not be allowed because under the principle of estoppel, a person is prevented from maintaining a position inconsistent with one in which he has acquiesced. Stated simply, petitioner is estopped from assailing the authority of the persons who received the LOA, the PAN, the FAN and the FDDA as it was never raised in the administrative level.

Respondent further continues that he, acting in good faith, allowed petitioner to continually substantiate its own contentions at the administrative investigation in the spirit of fair play. Now, facing a result it does not agree to, petitioner, disowns the validity of its own actions by attacking the legitimacy and propriety of the service of the BIR notices and the supposed lack of authority of the individuals who received them. This should not be allowed for being contrary to the conclusive presumption provided in Section 2(a)[1] of Rule 131 of the Revised Rules of Court.

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[1] "**SEC. 2.** *Conclusive presumptions.*—The following are instances of conclusive presumptions:
(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he

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Moreover, respondent also points out the different addresses that petitioner have. Noticeably, the LOA dated September 9, 2010, PAN dated January 24, 2012, and FAN dated July 20, 2012 were all sent to 30th Street, Bonifacio Blvd. Global City, Taguig City, which is petitioner's registered address. While, the LOA dated October 24, 2013, PAN dated February 3, 2016, and FAN dated March 15, 2016, were all sent to 32nd Street cor. Bonifacio Blvd. Global City, Taguig City, as this was also the address maintained by petitioner at that time.

Then, petitioner's address when the FDDA dated October 13, 2016 was served, allegedly reverted back to 30th Street Bonifacio Blvd. Global City, Taguig City, which shows that it was never abandoned. In his conclusion, respondent claims that petitioner is maintaining all three (3) addresses at the same time.

Lastly, respondent avers that his recommendation for assessment based on best evidence obtainable justifies the application of the ten (10) year period to assess.

On the other hand, in its comment, petitioner opposes respondent's allegations and raises the following counter-arguments:

1. Revenue Regulations (RR) No. 12-99 requires detailed narration of facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based;

2. Respondent's concept of due process in assessment and collection of taxes is misplaced;

3. The principle of estoppel is not applicable in the case at bar;

4. The estoppel in *pais* mentioned under the Revised Rules on Evidence as a conclusive presumption cannot be applied in the case at bar;

5. The estoppel in silence under the New Civil Code is not applicable in the case at bar;

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cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it:"

6. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with the National Internal Revenue Code and BIR Revenue Regulations 12-99;

7. The null and void assessment issued by the respondent may be raised and questioned for the first time on appeal;

8. There is no estoppel when there is violation of the rights granted under the 1987 Philippine Constitution hence such violation can be raised for the first time on appeal;

9. The ends do not justify the means. Due process of law is complied with when the 'process that is due' provided for by the law and rules are observed;

10. The BIR notices were not served to petitioner's address; and

11. The recommendation for assessment based on best evidence obtainable which justifies the application of the ten (10) year period to assess is erroneous.

After due consideration of the arguments and counter-arguments of the parties, this Court finds no merit in the present Motion for Reconsideration.

With regard to the issue of estoppel and the raising new issues on appeal, this Court finds the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications, Inc.*[2] instructive on the matter, the pertinent portions of which read as follows:

> "The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

[2] G.R. No. 163835, July 7, 2010.

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> The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."

Perforce, the second paragraph of Section 1[3] of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) expressly provides that in deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

Evidently, this Court may take cognizance of the issue regarding the proper service of the BIR notices, which is part of the due process requirement in the issuance of a deficiency tax assessment, even if the same have not been raised in the administrative level.

To reiterate, based on the evidence presented by the parties, this Court found that respondent did not comply with Section 3.1.4 of RR No. 12-99, concerning personal service of the PAN, FAN and FDDA for taxable year 2009, as well as the PAN and FAN for taxable year 2012. While it is true that some of the BIR notices appear to have been received by the people name therein, however, no statement regarding their designation and authority to act for and in behalf of petitioner were mentioned by respondent.

As held by the Supreme Court, the persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the Commissioner of Internal Revenue to strictly

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[3] "**SECTION 1.** *Rendition of judgment.* – x x x.

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. (2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)" comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process.[4]

The substantial irregularities in the alleged personal service of the BIR notices for taxable years 2009 and 2012 as noted by the Court in the assailed Decision only show that respondent failed to strictly comply with the requirements of the law, regulations and jurisprudence cited therein.

As to the rest of the arguments raised by both parties, the same had already been substantially considered and addressed in the Decision assailed by respondent.

Accordingly, this Court correctly held that no valid assessment was issued by respondent as petitioner did not receive the same. And since *an invalid assessment bears no valid fruit,*[5] the assessments and the FDDA issued against petitioner for taxable years 2009 and 2012 should, therefore, be cancelled for not properly observing petitioner's right to due process of law.

WHEREFORE, finding no cogent reason to reverse the Court's ruling, respondent's Motion for Reconsideration (On the Decision promulgated on August 6, 2019) is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[4] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[5] *Ibid.*