REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

FLORENTON M. CHIN,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE/REVENUE REGION NO. 16/REVENUE DISTRICT NO. 98, CAGAYAN DE ORO,
Respondent.

CTA CASE NO. 8989

Members:

DEL ROSARIO, P.J., *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUN 11 2020 - 9:31 am

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RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is petitioner's **Motion Reconsideration**, filed though registered mail on October 15, 2019 and received by this Court on October 24, 2019, without respondent's comment as per Records Verification Report dated January 28, 2020.

On August 15, 2019, a Decision was promulgated by this Court upholding respondent's assessment for being final and executory due to petitioner's failure to timely file a valid protest, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

In its Motion, petitioner claims that this Court erred in holding that the assessment has attained finality and can no longer be disputed. Petitioner primarily argues that the Preliminary Assessment Notice (PAN) dated December 10, 2008 was issued without authority since the one who issued it, Regional Director Mustapha M. Gandarosa, was already transferred and relieved of his duties at the time of its issuance, by reason of Revenue Travel Assignment Order (RTAO) No. 212-2008 dated October 20, 2008. Petitioner further insists that the Court erred in disregarding his rebuttal evidence consisting of Exhibit "P-13" (*RTAO No. 212-2008 dated October 20, 2008 issued by the Commission of Internal Revenue)* and Exhibit "P-14" *(Certification dated November 3, 2016 issued by the Records Officer of the Court of Appeals)* which would tend to prove that respondent's deficiency assessments against it should be considered void for the improper issuance of PAN.

After due consideration, this Court is not swayed.

In the assailed Decision, this Court found that petitioner was not able to file a valid Protest to the assessment, citing Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 3.1.5 of Revenue Regulations (RR) No. 12-99, as amended. Under the said Sections of the NIRC and RR, respectively, the taxpayer or his authorized representative may file an administrative protest to an assessment by filing a request for reconsideration or reinvestigation within **thirty (30) days** from the receipt thereof. If the taxpayer fails to file a valid protest, the assessment shall become final, executory and demandable. Moreover, the rules require that "[t]he taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect."

As borne by the records of the case, petitioner received the Formal Letter of Demand with Assessment Notices[1] (FLD/FAN) on May 11, 2009. Thereafter, the Bureau of Internal Revenue (BIR) received petitioner's letter[2] requesting reinvestigation only on June 18, 2009, which is eight (8) days past the thirty (30)-day period to file a protest. More so, petitioner's letter failed to state the facts, the applicable law, rules and regulations, or jurisprudence on which his

[1] Exhibits "R-21", "R-14", "R-15", BIR Records, p. 40, p. 90 and p. 88; and Exhibits "R-24", docket (vol. I), p. 318.
[2] Exhibit "P-7", docket (vol. I), p. 172.

protest was based. As a matter of fact, the entire letter consisted only of two sentences. Since petitioner failed to file a proper protest to the assessment within the period provided by law, the assessment attained finality.

Nonetheless, assuming arguendo, that petitioner was able to file a valid protest, this Court cannot still assume jurisdiction over the present case considering the judicial appeal was filed out of time. Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides that:

> 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, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA <u>within thirty (30) days after the receipt of such decision or ruling</u> or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. *(Underscoring supplied)*

Again, in the present case, petitioner filed his Petition for Review[3] with this Court on February 20, 2015, wherein he claimed that it was by sheer coincidence that he found a copy of the Warrant of Distraint and/or Levy (WDL) in his *bodega* on January 23, 2015.[4] However, according to the evidence presented before the Court, the WDL was served upon him on March 27, 2014[5] and, prior to such notice, the BIR also served petitioner a Notice of Tax Lien which included a Final Notice Before Seizure (FNBS)[6] on May 31, 2010.

In the case of *Commissioner of Internal Revenue vs. Isabel Cultural Corporation*,[7] the Supreme Court considered the FNBS therein as the BIR's final decision disposing of the request for reconsideration after receiving no other response to its request. The very title of the notice expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that

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[3] Captioned as "Petition", docket (vol. I), pp. 6-20.
[4] Timeliness of the Petition, Petition, *id.*, p. 7.
[5] Exhibit "R-17", BIR Records, p. 98.
[6] Judicial Affidavit of Florenton M. Chin, docket (vol. I), p. 156.
[7] G.R. No. 135210, July 11, 2001.

petitioner was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy. Based thereon, petitioner therefore, had thirty (30) days from the receipt of the FNBS or until June 30, 2010 to file its appeal with this Court. Even assuming further that petitioner considered the WDL as the reckoning point for filing his Petition, petitioner, at the latest, should have filed the same within thirty (30) days from the receipt of the WDL, or until April 26, 2014. Regrettably, by filing the present Petition only on February 20, 2015, petitioner slept on its right by failing to timely file its Petition on both opportunities.

Accordingly, this Court finds no new or substantial matter, or any compelling reason to justify the reversal or modification of the Decision assailed by petitioner.

WHEREFORE, in view of the foregoing, petitioner's Motion Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

I reiterate my Concurring Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice