REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

RED FOX GROUP, INC.,
Petitioner,

CTA CASE NO. 9752

- versus -

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 12 2020

9:05 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Red Fox Group, Inc. (**RFGI/petitioner**), pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal of the

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[1] Filed on 15 January 2018, Division Docket, pp. 10-34.

[2] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

Revised Final Decision on Disputed Assessment[3] (**RFDDA**) dated 23 November 2017 of respondent Commissioner of Internal Revenue (**CIR/respondent**). The pertinent portions of the assailed Decision read:

> ...
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> In the case at hand, Red Fox filed a protest through the representation of Ms. Ria Sablon on April 5, 2013... which was stamped received by the Office of the Commissioner, Office of the Regional Director of RR No. 5, Manila. Legal Division of RR No. 5, Manila, and by the Assessment Division of RR No. 5, Manila on April 5, 2013. By that time 31 days had elapsed since the receipt of the FAN [Final Assessment Notice] and FLD [Formal Letter of Demand] on March 5, 2013. Thus, by the time the protest was filed thirty-one days later, the FAN and FLD had become final, executory and demandable.
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> ...
>
> **WHEREFORE**, predicated on all the foregoing, the Decision denying the protest of **Red Fox Group, Inc.** against the Decision upholding the Formal Letter of Demand and Final Assessment Notice with Assessment No. 32-09-IT-4694 and 32-09-VT-4695, all dated January 24, 2013, and demanding payment of the total amount of **P17,762,752.18** representing deficiency income tax, value added[-] tax, and compromise penalties for the taxable year 2009 is hereby affirmed in all respects.
>
> ...

THE PARTIES

Petitioner RFGI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at No. 720 Coromina St., Quiapo, Manila.

On the other hand, respondent CIR, is the duly appointed Commissioner of the Bureau of Internal Revenue (**BIR**) empowered to perform the duties of his office, including to act on disputed assessments and refunds of internal revenue taxes as provided by law, among others. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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[3] Attached as Annex "A" of the Petition for Review (although not admitted into evidence), Division Docket, pp. 35-41.

FACTUAL ANTECEDENTS

On 01 September 2010, then Regional District Officer (**RDO**) Alfredo V. Misajon issued electronic Letter of Authority (**eLOA**) No. eLA201000013720[4] to petitioner, authorizing Revenue Officer (**RO**) Reyyan Nipal and Group Supervisor (**GS**) Nancy Sipat to examine its books of accounts and records relating to its internal revenue taxes for the period of 01 January 2009 to 31 December 2009.[5] Petitioner's employee, Marnell Tingson, received the said eLOA. Thereafter, petitioner received a *Subpoena Duces Tecum*[6] requiring its President, Johnny M. King, Jr., to appear before the BIR and to submit documents for taxable year (**TY**) 2009. Petitioner acceded and complied on 16 June 2011.

Later or on 06 February 2012, the BIR issued a Post Reporting Notice[7] (**PRN**). On 05 March 2013, petitioner received a Final Assessment Notice[8] (**FAN**) and Formal Letter of Demand[9] (**FLD**) dated 24 January 2013, forwarded on 06 March 2013 to petitioner's authorized representative, Ria A. Sablon (**Sablon**).

On 05 April 2013, petitioner filed its "PETITION/MOTION FOR CANCELLATION/TERMINATION OF FORMAL LETTER OF DEMAND DATED JANUARY 24, 2013"[10] (**protest**) against the FAN with then Commissioner Kim S. Jacinto-Henares (**Comm. Henares**). On 22 July 2013, petitioner received a letter dated 08 July 2013 from Regional Director (**RD**) Simplicio Madulara containing the results of the BIR's reinvestigation and serving as the latter's Final Decision on the Disputed Assessment (**FDDA**).[11]

On 14 August 2013, petitioner filed a Petition for Review before respondent CIR and on 03 September 2013, it also requested for: (1) Immediate Assistance as Part of Administrative/Remedies Prior to

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4 Exhibit "R-2", id., p. 135.
5 *Per* the parties' Joint Stipulation of Facts and Issues (JSFI); id., pp. 157-163.
6 Dated 30 May 2011; Exhibit "R-7", id., p. 141.
7 Exhibit "R-8", id., p. 142.
8 Exhibits "R-15" and "R-16", BIR Records, pp. 240-241.
9 Exhibit "R-14", id., p. 239.
10 Exhibit "R-17", id., p. 274; Denominated in full to be - "PETITION/MOTION FOR CANCELLATION/TERMINATION OF FORMAL LETTER OF DEMAND DATED JANUARY 24, 2013 received by the management on March 05, 2013 in Relation to eLA 201000013720 dated September 01, 2010 covering tax year 2009 and all notices emanated from it".
11 Exhibit "R-33", id., pp. 478-484.

Filing of Case Before Other Judicial Bodies; and, (2) Speedy Resolution and/or Legal Opinion.[12]

On 23 October 2013, petitioner received a Preliminary Collection Letter[13] (**PCL**) dated 12 October 2013. The following day, petitioner sent its Reply[14] to the PCL. In a Decision dated 23 November 2017, respondent CIR denied petitioner's protest. Petitioner received the copy of the decision on 15 December 2017.

Aggrieved by respondent's action on its protest, petitioner filed its Petition for Review before this Court on 15 January 2018.

PROCEEDINGS BEFORE THE COURT

On 09 March 2018, respondent filed his Answer[15] to petitioner's Petition for Review. After the parties submitted their Pre-Trial Briefs, Joint Stipulation of Facts and Issues (**JSFI**) and upon the termination of the pre-trial, trial ensued where petitioner presented its lone witness, Sablon.

On the witness stand, Sablon, petitioner's accountant and authorized representative, testified on petitioner's receipt of the FAN and FLD without, however, receiving a Preliminary Assessment Notice (**PAN**) prior thereto.[16] After resting its case, petitioner submitted its Formal Offer of Evidence[17] (**FOE**) on 11 June 2018, with respondent's Comment/Opposition on 04 July 2018.[18]

In a Resolution dated 20 July 2018, the Court resolved to admit petitioner's Exhibits "P-7"[19], "P-15"[20] and "P-15-a"[21] only. The rest of petitioner's exhibits were denied admission for its failure to either

12 Joint Stipulation of Facts and Issues, Division Docket, p. 158.
13 Exhibit "P-13", but not admitted into evidence for failure to submit duly marked document and for failure to identify the same in Court.
14 Exhibit "P-14", but not admitted into evidence for failure to submit duly marked document and for failure to identify the same in Court.
15 Division Docket, pp. 90-97.
16 Exhibit "P-15", Judicial Affidavit of Ria A. Sablon, id., pp. 174-176.
17 Id., pp. 184-187.
18 Id., pp. 190-191.
19 Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) dated 24 January 2013.
20 Judicial Affidavit of Ria A. Sablon, supra at note 16.
21 Signature of Ria A. Sablon, Division Docket, p. 175.

present their original copies or identify the same in Court. Petitioner did not file any motion for reconsideration on the Court's action on its FOE.

For its part, respondent presented Benhur C. Nacorda (**Nacorda**), the BIR's Mailing In-Charge of the Administrative Division, Revenue Region No. 6, Reyyan G. Nipal, BIR Revenue Officer assigned at Revenue District Office No. 33, Revenue Region No. 6 and Edna A. Ortalla (**Ortalla**), Chief of the Assessment Section of the Assessment Division of Revenue Region No. 6. Essentially, Nacorda testified on the existence of the PAN and petitioner's receipt of the same.[22] Ortalla, on the other hand, testified about preparing the PAN and forwarding the same to the BIR's Administrative Section for mailing.[23]

Later, with no more witnesses to present, respondent submitted its FOE on 29 March 2019. The Court, in a Resolution dated 03 June 2019, admitted the following exhibits: Exhibits "R-1"[24], "R-2"[25], "R-3"[26], "R-4"[27], "R-5"[28], "R-6"[29], "R-7"[30], "R-8"[31], "R-9"[32], "R-10"[33], "R-11"[34], "R-12"[35], "R-13"[36], "R-14"[37], "R-15"[38], "R-16"[39], "R-17"[40], "R-18"[41], "R-33"[42], "R-36"[43], "R-37"[44], "R-42"[45], "R-39"[46], "R-40"[47] and "R-41"[48].

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22 Id., pp. 208-213.
23 Id., pp. 220-225.
24 Income Tax Return with attached Financial Statements for 2009 of Red Fox Group, Inc..
25 Electronic Letter of Authority SN: eLA201000013720 dated September 1, 2010.
26 First Request for Presentation of Records dated September 16, 2010.
27 2nd Request for Presentation of Books and Other Accounting Records.
28 Final Request for Presentation of Records Before Issuance of Subpoena Duces Tecum dated November 18, 2010.
29 Memorandum for Recommendation for Issuance of Subpoena Duces Tecum dated May 5, 2011.
30 Subpoena Duces Tecum dated May 30, 2011.
31 Post Reporting Notice dated February 6, 2012, with attached computation of Deficiency Taxes, Schedule of Purchases Per Audit & Details of Discrepancy.
32 Memorandum Report.
33 Memorandum of Assignment dated April 25, 2013.
34 BIR Letter dated April 29, 2013 to Red Fox Group, Inc..
35 Memorandum Report dated May 30, 2013.
36 Preliminary Assessment Notice (PAN) dated January 8, 2013 with Details of Discrepancies.
37 Formal Letter of Demand dated January 24, 2014 with attached Details of Discrepancies.
38 Final Assessment Notice on Income Tax dated January 24, 2013; Assessment No. 32-09-IT-4694.
39 Final Assessment Notice on Value-Added Tax dated January 24, 2013; Assessment No. 32-09-VT-4695.
40 Protest Letter dated March 26, 2013.
41 BIR Letter dated April 23, 2013.
42 BIR's Final Decision dated November 23, 2017 on Red Fox Group, Inc.'s protest.
43 Transmittal Letter to Post Office Re: Mailing of Preliminary Assessment Notice (PAN).
44 Registry Receipt No. 919941 for mailed PAN.
45 Registry Return Card of Registry Receipt No. 919941.
46 Judicial Affidavit of Mr. R[e]yyan Nipal dated April 20, 2018.
47 Judicial Affidavit of M[s]. Edna Ortalla dated January 25, 2019.
48 Judicial Affidavit of Mr. Benhur Nacorda dated January 28, 2019.

Thereafter, petitioner and respondent filed their respective Memoranda and the case was submitted for decision.

ISSUES

As the parties agreed on, the following issues are for this Court's resolution:

I.
WHETHER THE HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE INSTANT PETITION FOR REVIEW; AND,

II.
WHETHER THE ALLEGED TAX DEFICIENCY ASSESSMENTS FOR THE YEAR ENDING 31 DECEMBER 2009 HAVE FACTUAL AND LEGAL BASES AND HENCE, HAVE BECOME FINAL, EXECUTORY AND DEMANDABLE.

In support of the above, petitioner argues that this Court has jurisdiction over the present action. According to it, its authorized representative received a copy of the FAN and FLD on **06 March 2013** thus, it had until **05 April 2013** within which to file its protest to the FAN. It further alleges that the failure of its authorized representative to receive the PAN[49] constituted in the BIR's failure to observe due process thus, the assessment is void.

Respondent counters that the receipt of the FAN and FLD by petitioner's store manager was proper service therefore giving petitioner only up to **04 April 2013** (not 05 April 2013) within which to file its protest thereto. Since petitioner's protest was filed a day after the deadline, both the FAN and FLD had become final and executory.

To substantiate its claim that the PAN was duly and properly served on petitioner, respondent once again pointed to the Registry Receipt[50] that Niña Mae Locronio (**Locronio**) signed for petitioner.

[49] Division Docket, p. 214.
[50] Exhibit "R-42", id., p. 219.

RULING OF THE COURT

After an assiduous review of the records of the case, the Court is constrained to dismiss petitioner's present Petition for Review. The reasons are essayed below, *in seriatim*.

THE COURT HAS NO JURISDICTION OVER THE PRESENT PETITION FOR REVIEW

Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Revenue Regulation (**RR**) 12-99[51] detail the periods within which a taxpayer may perfect its administrative protest with the CIR, to wit:

> ...
> **Sec. 228.** ***Protesting of Assessment.*** — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his finding...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
> ...
>
> 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.
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> 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

[51] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

> receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
>
> ...

While Section 3.1.4 of RR 12-99 as amended by RR 18-2013[52] reads:

> ...
>
> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
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> ...

Given the aforementioned rules, an aggrieved taxpayer has thirty (30) days from receipt of the FAN or FLD within which to file its protest thereto. In the present case, petitioner had until **04 April 2013** to file its protest to the FAN and FLD it received on **05 March 2013**.

As admitted by the parties in their JSFI, petitioner's protest was filed only on **05 April 2013**. It is on this note that petitioner challenges the reckoning date of the 30-day reglementary period. Petitioner insists that the period should start to run from Sablon's actual receipt of the FAN and FLD, alleging that as its authorized representative for all BIR-related matters and communications, actual notice could only have taken place upon her receipt.

The Court is not persuaded.

It is noted that petitioner offered no proof of Sablon's appointment as its representative with respect to BIR-related matters. The Court is, however, not unmindful of certain exceptions which allow the Court to consider pieces of evidence not formally offered; particularly, those enumerated in the case of *Emeritu C. Barut v. People of the Philippines*[53] wherein the Supreme Court held:

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52 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

53 G.R. No. 167454, 24 September 2014; *See also People of the Philippines v. Susana Napat-a y Macabio*, G.R. No. 84951, 14 November 1989; and, *The People of the Philippines v. Silvestre Mate y Abad*, G.R. No. L-34754, 27 March 1981.

> ...
> The rule that only evidence formally offered before the trial court can be considered is relaxed where two requisites concur, namely: one, the evidence was duly identified by testimony duly recorded; and, two, the evidence was incorporated in the records of the case. Furthermore, the rule has no application where the court takes judicial notice of adjudicative facts pursuant to Section 2, Rule 129 of the Rules of Court; or where the court relies on judicial admissions or draws inferences from such judicial admissions within the context of Section 4, Rule 129 of the Rules of Court; or where the trial court, in judging the demeanor of witnesses, determines their credibility even without the offer of the demeanor as evidence.
> ...

Herein, there was only one piece of unmarked evidence which Sablon identified (from which her authority to represent RFGI may be inferred), that is, a photocopy of a secretary's certificate[54] (the original of which appears to be part of the BIR records).

A reading of the secretary's certificate reveals that petitioner authorized Sablon as its representative on 16 November 2012. Whether the BIR was aware of Sablon's authority as petitioner's representative is, however, another matter. A review of the records and evidence from both parties fails to evince that respondent was made aware of the said authority prior to the service of the PAN, FAN and FLD.

First, on cross examination, Sablon testified that the original secretary's certificate was attached to petitioner's protest.[55] This means that the BIR was only made aware of petitioner's authorization after the FAN and FLD had already been served on petitioner. No evidence presented during trial suggests that the BIR's agents, at the time of the FAN and FLD's service, were aware of Sablon's appointment, let alone, of her employment with petitioner.

Second, petitioner's protest admits to its receipt of the FLD on **05 March 2013** as evidenced clearly by its own protest before the CIR captioned as "PETITION/MOTION FOR CANCELLATION/ TERMINATION OF FORMAL LETTER OF DEMAND DATED JANUARY 24, 2013 **RECEIVED BY THE MANAGEMENT ON MARCH 05, 2013** IN RELATION TO ELA 201000013720 DATED SEPTEMBER 01,

54 BIR Records, p. 451.
55 TSN dated 06 June 2018, p. 8.

2010 COVERING TAX YEAR 2009 AND ALL NOTICES EMANATED FROM IT".[56]

With petitioner's admission of its receipt of the FLD on 05 March 2013 (and not the day after), it should then be safely concluded that the FLD was properly served on it, through a person who has the authority to receive the same.

Third, a review of the protest discloses that petitioner did not put into question any impropriety in the FAN's and FLD's service. Neither did it raise such issue in its subsequent Petition for Review before the CIR.

With the foregoing, to the Court's mind, petitioner's argument that the reglementary period for filing the protest should be counted from Sablon's receipt on **06 March 2013** is an afterthought. Even assuming *ex gratia argumenti* that prescription should run from Sablon's receipt, her bare testimony as to this fact would be insufficient to contradict petitioner's own clear admission of the FAN and FLD's receipt on 05 March 2013, as shown in its protest filed before the CIR.

It bears stressing that petitioner presented no other evidence to corroborate Sablon's lone testimony as regards this allegation. The Court is thus compelled to treat her testimony as self-serving and undeserving of consideration. At any rate, given petitioner's conclusive admission of the date of receipt (05 March 2013), it is now estopped from claiming otherwise. Resultantly, with petitioner's failure to timely file its protest, the FAN and FLD became final and executory. As a necessary consequence, respondent's assessment of petitioner has already fallen outside of this Court's power of judicial review. The Supreme Court in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue et al.*,[57] held:

> ...
> A request for reconsideration must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and

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56 Supra at note 10; Emphasis and underscoring supplied.

57 G.R. No. 148380, 09 December 2005.

> enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested...
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> ...

The Supreme Court reiterated this legal principle in the latter case of *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[58], wherein it held that - "the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal".

Unfortunately, despite petitioner's obvious attempt to confuse the facts, all the foregoing circumstances point to the conclusion that petitioner received the FLD in a manner consistent with law; but, through some miscalculation, it had failed to file its protest on time. Petitioner's belatedly raised argument of the FLD's actual receipt on a later date is no more than its desperate attempt to shift blame on the respondent for its own negligence.

With the lack of jurisdiction evident on our part, the Court finds it no longer necessary to belabor any discussion on other matters raised by the parties.

WHEREFORE, the foregoing considered, the petitioner's Petition for Review filed on 15 January 2018 is **DENIED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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58 G.R. No. 169225, 17 November 2010.

WE CONCUR:

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

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

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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