REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

-*versus*-

DRUGMAKER'S BIOTECH RESEARCH LABORATORIES, INC. (through its representative Drugmaker's Laboratories, Inc.),
Respondent.

CTA *EB* NO. 1860
(CTA Case No. 8664)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 17 2020 3:40 p.m.

x- x

RESOLUTION

MANAHAN, J.:

To be resolved before this Court is respondent's **Motion for Reconsideration (of Decision promulgated September 26, 2019)**[1] filed on October 10, 2019 without[2] petitioner's comment despite due notice[3], praying for the reconsideration and setting aside of this Court's *Decision* dated September 26, 2019 and the issuance of a new one instead. The dispositive portion of the abovementioned decision is quoted below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the assailed January 5, 2018 *Decision* and May 3, 2018 *Resolution* are hereby **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**

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[1] *Rollo*, CTA EB No. 1860, pp. 131-155.
[2] *Id.*, Records Verification dated January 14, 2020, p. 165.
[3] *Id.*, Resolution dated November 8, 2019, pp. 163-164.

Respondent faulted this Court in finding that the person named "Fernando C. Rey" who received the warrant of distraint and/or levy (WDL) was authorized to receive the same on its behalf.

Respondent argues that WDL is not a decision or a ruling that could have set-off the 30-day period for DBRLI to file its petition for review (PFR) to this Court and that the receipt of said WDL did not produce any legal effect since it is the fruit of a void assessment, hence, a mere scrap of paper. Respondent insists that petitioner's right to collect taxes from it has already prescribed.

We deny the instant motion.

Respondent cited the testimony of its former President and Chairman of the Board, Mr. Eliezer V. Del Mundo, during the trial of this case that the merger of the respondent with the surviving company Drugmaker's Laboratories, Inc. (DLI) effectively ceases the employment of its employee who either had retired from or had been absorbed by the latter company. Hence, there could have been no authorized person to receive any correspondence intended for the respondent.

This Court would like to emphasize and reiterate the factual findings as stated in the assailed decision that nowhere in the records of this case did respondent dispute the identity and authority of "Fernando C. Rey" who was indicated in the WDL that received the same. Moreover, the subject WDL was even adopted by it in its formal letter of evidence (FOE), to wit:

> "However, the question that should be answered is whether the petition before the Court in Division was filed within the reglementary period.
>
> xxx xxx xxx
>
> However, in its Formal Offer of Evidence, respondent stated that it "has adopted the copy of the Warrant of Distraint and Levy which is found on Page 148 of the BIR Records."
>
> In the said WDL, a certain "Fernando C. Rey" whose signature appears above such name had received the subject WDL on April 23, 2013. Nowhere in the records of this case was the identity and authority of such person to receive said WDL on the said date refuted or assailed by the respondent.

> Considering that respondent did not refute nor assail the above facts and the adoption of the subject WDL as its own evidence, the date for respondent's receipt of said WDL shall be reckoned on April 23, 2013.
>
> Respondent had 30 days from April 23, 2013 or until May 23, 2013 to file the PFR to this Court. However, respondent only filed said PFR on June 24, 2013 which is beyond the reglementary period provided by law, rules and regulations.
>
> Hence, this Court had no jurisdiction to decide on the instant case."

Further, this is the first time in the instant case that respondent refuted the authority of the person who received said WDL. In *Development Bank of the Philippines v. West Negros College, Inc.*[4], the Supreme Court ruled that issues raised for the first time in motion for reconsideration or appeal should not be entertained, to wit:

> ".... Moreover, **it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal**. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors." (*Emphasis supplied*)

The reason for not allowing such issues to be raised for the first time on appeal was discussed in the case of *Chinatrust (Phils.) Commercial Bank v. Philip Turner*[5], to wit:

> "Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.
>
> In *Philippine Ports Authority v. City of Iloilo*:
>
>> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for

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[4] G.R. No. 152359, May 21, 2004.
[5] G.R. No. 191458, July 3, 2017.

> the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process. (Citations omitted)

There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. This Court has previously declared that:

> "[C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid. (Citations omitted)"

As to respondent's argument that the WDL is not a decision or a ruling that could have set-off the 30-day period for it to file its PFR, this Court reiterates the disquisitions in the assailed decision, to wit:

> "In *Commissioner of Internal Revenue v. Algue, Inc. et al.*, the Supreme ruled that the receipt of the WDL is the proof of the finality of the assessment, hence, tantamount to a decision by the petitioner on the subject assessment, to wit:
>
> > "...It is true that as a rule the warrant of distraint and levy is "proof of the finality of the assessment" and "renders hopeless a request for reconsideration," being "tantamount to an outright denial thereof and makes the said request deemed rejected..."
>
> In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, the Supreme Court ruled that this Court may acquire jurisdiction on other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, to wit:
>
> > "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals*, the CIR argued

> that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide "other matters" related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.
>
> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
>
> Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR)."

Thus, considering that the WDL is one among those "other matters" in the 1997 NIRC, the Court may acquire jurisdiction over the instant case.

Considering that this Court has no jurisdiction to take cognizance of the appeal due to the belated filing of the PFR, other errors raised in the instant motion shall no longer be discussed.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (of Decision promulgated September 26, 2019)* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice