CTA Form No. 8 (For DCC)

20-000097-0057

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10265

MA. ERLINDA T. ONG, Doing Business Under the Name and Style 'Maranatha Sales Distributor, Duly Represented herein by her Attorney-in-fact, Ms. Ria Sablon,
Petitioner,

- versus -

NOTICE OF RESOLUTION

THE COMMISSIONER OF INTERNAL REVENUE (CIR) OF THE BUREAU OF INTERNAL REVENUE (BIR),
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. BRYAN ANTHONY C. DIEGO
Bureau of Internal Revenue
Room 704, Prosecution Division, BIR National Office Building
Sen. Miriam. P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. ERIC C. CORTES
Unit 103, AIC Burgundy Empire Tower
Sapphire Road, Ortigas Center
Brgy. San Antonio, Pasig City

GREETINGS:

You are hereby notified by these presents that on **August 9, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 12, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FIRST DIVISION

MA. ERLINDA T. ONG, Doing Business Under the Name and Style 'Maranatha Sales Distributor, Duly Represented herein by her Attorney-in-fact, Ms. Ria Sablon, *Petitioner,*	**CTA CASE NO. 10265** *Members:* **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
-versus-	
THE COMMISSIONER OF INTERNAL REVENUE (CIR) OF THE BUREAU OF INTERNAL REVENUE (BIR), *Respondent.*	Promulgated: AUG 0 9 2024, 8:50AM

x- x

RESOLUTION

CUI-DAVID, J.:

For resolution is respondent's *Motion for Reconsideration (Re: Decision promulgated on 03 May 2024)* praying that the Court reverse and set aside its Decision dated May 3, 2024 (assailed Decision), with the following dispositive portion:

> **WHEREFORE**, the *Petition for Review* is **GRANTED**. Accordingly, the Formal Letter of Demand dated March 2, 2015, the Warrant of Distraint and/or Levy dated March 2, 2020, and the Warrants of Garnishment dated March 9, 2020, assessing petitioner of deficiency income tax, percentage tax, and compromise penalty for taxable year 2011, inclusive of interests and surcharges, are **CANCELLED** and **SET ASIDE**.
>
> Further, respondent is **ENJOINED** from proceeding with the collection of taxes in this case.
>
> **SO ORDERED.**

Respondent argues that the Court has no jurisdiction over this case since petitioner's right to appeal to this Court was lost when it failed to appeal within 30 days from petitioner's receipt of the Preliminary Collection Letter (PCL), pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3.1.5 of Revenue Regulations (RR) No. 12-99.

Respondent insists that petitioner's right to due process was not violated because the Preliminary Assessment Notice (PAN) was sent to petitioner through registered mail. Also, respondent claims that petitioner was duly informed of the facts and the law upon which the assessments were made and was given a real opportunity to be heard, as shown by petitioner's filing of her protest to the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) and PCL.

Respondent further argues that the right to collect petitioner's percentage tax liability has not prescribed because Section 222 of the NIRC of 1997, as amended, provides an exception to the three-year period to collect in case of failure to file a return. Given that petitioner did not present proof that she filed a percentage tax return for 2011, the extraordinary period to assess and collect applies.

Respondent also claims that presumptions favor the correctness of the assessment; thus, petitioner must satisfactorily overcome said presumption of regularity. Lastly, respondent asserts that the collection of taxes cannot be enjoined because the elements necessary for the issuance of the injunction are not satisfied; particularly, there is no urgent and paramount necessity for a suspension order to be issued to prevent any grave and irreparable damage upon petitioner.

The motion lacks merit.

Apart from the issue that the Court cannot enjoin respondent from collecting petitioner's deficiency taxes, respondent's arguments were already considered and passed upon by the Court in the assailed Decision. As discussed therein, respondent failed to prove that petitioner received the PAN. It is settled that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the Bureau of

Internal Revenue must strictly comply with.[1] Considering that respondent did not comply with the requirements of due process, the assessments against petitioner are null and void.[2] As such, the application of the extraordinary prescriptive period[3] and the collection of taxes are improper.

WHEREFORE, respondent's *Motion for Reconsideration (Re: Decision promulgated on 03 May 2024)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[1] *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023, citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[2] *Commissioner of Internal Revenue v. Maxicare Healthcare Corp.*, G.R. No. 261065, July 10, 2023.
[3] See *Commissioner of Internal Revenue v. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024.