REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

MERIDIEN EAST REALTY & DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NO. 9837**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: ______________ 2:47 pm

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a *Petition for Review*, filed on May 17, 2018, seeking the cancellation and withdrawal of the assessment against petitioner for alleged deficiency income tax ("IT"), value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax – ONETT ("WO"), withholding tax on compensation ("WTC"), and documentary stamp tax – ONETT ("DST-O") for taxable year ("TY") 2009.

The Parties[1]

Petitioner is a domestic corporation duly organized and existing under Philippine law.

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with the authority and power to, among others, decide disputed assessments and cancel and abate tax liabilities pursuant to the provisions of the *National Internal Revenue Code of 1997, as amended* ("*NIRC*") and other laws, rules, and regulations.

---

[1] Pre-Trial Order, dated January 14, 2020, *Rollo* Vol. 2, p. 796.

The Facts

The earliest incident of note in this case is the issuance of *Bureau of Internal Revenue* ("BIR") *Ruling No. DA-245-05*, which found petitioner exempt from IT, EWT, and VAT. However, this was later revoked by *Revenue Memorandum Circular* ("*RMC*") *No. 20-2010* on March 8, 2010.[2]

A little over a year later, petitioner filed its Annual Income Tax Return ("AITR") for TY 2009 on April 15, 2010, the deadline for the filing of such.[3]

Months later, on September 13, 2010, respondent issued Letter of Authority No. eLA20100004522, dated September 7, 2010, for the examination of petitioner's accounting records for TY 2009.[4]

Respondent eventually issued a Preliminary Assessment Notice ("PAN") against petitioner on April 30, 2015. Petitioner received this on May 13, 2015 and protested the PAN on May 20, 2015.[5]

Respondent then issued a Final Assessment Notice ("FAN") on June 3, 2015, with petitioner receiving the same on even date. Aggrieved, petitioner protested the FAN on July 3, 2015.[6]

Three years later, on April 17, 2018, a Jose Eduardo Batara, allegedly a stockholder of petitioner, received a Reminder Letter in connection with the subject assessment.[7]

Treating the Reminder Letter as respondent's decision on its protest to the FAN, petitioner filed the instant Petition on May 17, 2018, together with an Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction ("TRO Application"). Respondent filed his Answer to the Petition via registered mail on September 4, 2018.[8]

After trial,[9] the Court denied the TRO Application on October 10, 2018, for lack of urgency and merit.[10]

---

2 Petition for Review, p. 3, *Rollo* Vol. 1, p.12.
3 Exhibit "P-16", *Rollo* Vol. 3, p. 1124.
4 Petition for Review, p. 4, *Rollo* Vol. 1, p. 13.
5 *Id.*
6 *Id.*
7 Petition for Review, p. 5, *id.* at 14.
8 Answer, *id.* at 160-166.
9 Minutes of the Hearing, held on August 28, 2018, *id.* at 158.
10 Resolution, dated October 10, 2018, p. 5, *id.* at 214.

Trial on the main case then ensued. Petitioner presented witnesses Gerry V. Dumaguing, Rafael G. Yaptinchay,[11] and Benito A. Obra, Jr.[12] All of petitioner's exhibits were admitted.[13] Meanwhile, respondent presented witness Revenue Officer ("RO") Ian D. Caymo.[14] Of the 11 pieces of documentary evidence presented by respondent, only Exhibits "R-1" to "R-5" and "R-11" were admitted, with Exhibits "R-6" to "R-10" being denied.[15]

Petitioner filed its Memorandum via registered mail on September 11, 2024,[16] while respondent failed to do the same.[17] The Court thus submitted this case for decision through a Minute Resolution, dated October 21, 2024.[18]

Hence, this Decision.

The Issues[19]

(1) Whether or not petitioner is liable to pay the assessed deficiency taxes for TY 2009;

(2) Whether or not *RMC No. 20-2010* is void for violating petitioner's procedural due process; and

(3) Whether or not the revocation of *BIR Ruling No. DA-245-05* may be given retroactive effect.

Arguments of the Parties

Petitioner's Arguments

Petitioner raises the following arguments in its Memorandum:

(1) *RMC No. 20-2010* is void for violating petitioner's right to procedural and substantive due process: *RMC*s are not generally made public, so *RMC No. 20-2010* did not constitute valid notice to petitioner of the revocation of *BIR Ruling No. DA-245-05*;[20]

---

[11] Minutes of the Hearing, held on October 22, 2020, *Rollo* Vol. 2, p. 842.
[12] Minutes of the Hearing, held on April 6, 2022, *Rollo* Vol. 3, p. 954.
[13] Resolution, dated August 1, 2022, p. 6, *id.* at 1327; Resolution, dated October 26, 2023, p. 5, *Rollo* Vol. 4, p. 1368.
[14] Minutes of the Hearing, held on March 19, 2024, *id.* at 1380.
[15] Resolution, dated July 30, 2024, p. 1, *id.* at 1437.
[16] *Id.* at 1447-1537.
[17] Records Verification, dated October 1, 2024, *id.* at 1542.
[18] *Id.*, unpaginated.
[19] Pre-Trial Order, p. 4, *Rollo* Vol. 2, p. 798.
[20] Memorandum, pp. 32-41, *Rollo* Vol. 4, pp. 1478-1487.

(2) The revocation of *BIR Ruling No. DA-245-05* should not be given retroactive effect, as doing so would be prejudicial to petitioner as a taxpayer, and none of the exceptions to the non-retroactivity of rulings under *Section 246 of the NIRC* apply;[21] and

(3) The assessment lacks factual legal and factual basis and was issued beyond the prescriptive period.[22]

Respondent's Arguments

While respondent did not file a Memorandum, he raised the following counterarguments in his Answer:

(1) The assessment was based on the best evidence available;[23]

(2) The revocation of *BIR Ruling No. DA-245-05* was done in conformity with the provisions of *Section 246 of the NIRC*;[24]

(3) The assessment is based on specific factual findings;[25] and

(4) Respondent's right to assess had not yet prescribed when he issued the assessment, as the extended 10-year period to assess under *Section 222(a) of the NIRC* is applicable here.[26]

The Ruling of the Court

The Court finds merit in the Petition.

This Court has jurisdiction over the present Petition for Review.

Under *Section 7(a)(1) of Republic Act* ("*RA*") *No. 1125, as amended*, the Court of Tax Appeals has the authority to review appeals from the CIR's decisions on disputed assessments:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

---

21 Memorandum, pp. 41-56, *id.* at 1487-1502.
22 Memorandum, pp. 56-88, *id.* at 1502-1534.
23 Answer, p. 2, *Rollo* Vol. 1, *id.* at 161.
24 *Id.*
25 Answer, p. 3-5, *id.* at 162-164.
26 Answer, p. 5, *id.* at 164.

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties relating thereto, or other matters arising under the Nation Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> . . . .

Meanwhile, *Rule 8, Section 3(a)* requires that such an appeal be filed with this Court within 30 days from receipt of the adverse decision:

> 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. . . may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision. . .

Importantly, a taxpayer has two options for elevating a judicial protest in case respondent does not timely act upon a protest, as declared in *RCBC v. Commissioner of Internal Revenue*:[27] it can either (a) file a Petition within 30 days from the expiration of the 180 days given to respondent to act on a protest; or (b) file a Petition within 30 days from receipt of respondent's final decision on the matter, even if said decision was issued beyond the 180-day period.

Here, petitioner assails the assessment against it for TY 2009. Said assessment had previously been disputed, via petitioner's protests to the PAN and FAN. The case thus falls under *Section 7(a)(1) of RA No. 1125, as amended.*

As for the 30-day prescriptive period, petitioner filed the instant Petition on May 17, 2018, exactly 30 days after its receipt of the Reminder Letter through Batara on April 17, 2018. A question now arises: was the Reminder Letter respondent decision on petitioner's protest to the FAN?

Respondent's final decision on assessments is usually issued as a Final Decision on Disputed Assessment ("FDDA"). Petitioner never received any such FDDA, so it treated the Reminder Letter as the final decision appealable to this case. This is not without precedent: the Supreme Court has consistently considered such letters that do not conform to the usual format of a FDDA as appealable final decisions, in cases as early as *Advertising Associates, Inc. v.*

---

[27] G.R. No. 168498, April 24, 2007.

Court of Appeals[28] and as recent as *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*.[29]

However, such consideration was made in these cases as the letters' tenors clearly communicated an intent to have these be final decisions, such as through the inclusion of a statement like "This constitutes our final decision on the matter." No such statement exists in the Reminder Letter, which does not even mention petitioner's protests. Can it still be considered respondent's final decision?

Interestingly, the Bureau of Internal Revenue ("BIR") Records does contain a FDDA that addresses petitioner's protest to the FAN.[30] It also contains a Preliminary Collection Letter,[31] Final Notice Before Seizure,[32] a Warrant of Distraint and/or Levy,[33] and a Warrant of Garnishment,[34] all dated from before the Reminder Letter. However, aside from a stray claim in his Answer that the FDDA was served on petitioner via registered mail,[35] respondent did not use these issuances in his arguments. He did not offer any of these in evidence. Even witness RO Caymo is completely silent on the matter.

From petitioner's narration of events and respondent's silence on the issuances after the FAN, the Court concludes that respondent never properly served the FDDA despite later pursuing collection. As petitioner never received the FDDA, it cannot be validly considered as respondent's final decision on the assessment.

Relevant to the issue at hand, the existence of the FDDA explains the Reminder Letter's lack of language characterizing itself as a final decision. It seems said Letter was written under the assumption that respondent already issued a final decision in the FDDA, one that had gone unprotested. Any language indicating finality was thus seen as unnecessary.

Since the FDDA was never properly served on petitioner, however, it cannot be considered respondent's final decision. The Reminder Letter, meanwhile, can. As the Reminder Letter demanded payment of the assessment that petitioner protested in 2015, it was reasonable for petitioner to interpret the Letter as a denial of its protest. And even if the Letter lacked any indication of finality, again, the same can be imputed to the assumption that the FDDA already constituted respondent's final decision. Petitioner cannot be made to suffer for a wrong assumption on the part of the BIR.

---

28 G.R. No. 59758, December 26, 1984.
29 G.R. No. 244202, July 10, 2023.
30 BIR Records, pp. 577-583.
31 *Id.* at 607.
32 *Id.* at 609.
33 *Id.* at 617.
34 *Id.* at 618-645.
35 Answer, p. 5, *Rollo* Vol. 1, p. 164.

In fine, the Court finds that petitioner validly treated the Reminder Letter as the final decision appealable to Us.

Petitioner filed the instant Petition May 17, 2018. This was exactly 30 days from its receipt of the Reminder Letter on April 17, 2018, as discussed above. The Petition was thus timely filed, and this Court properly assumed jurisdiction over this case.

Respondent's right to assess had already prescribed when he issued his assessment.

Petitioner insists that respondent's right to assess it for TY 2009 had already prescribed when he issued the assailed assessments. Respondent does not agree, maintaining that the extended 10-year period is applicable here.

We find for petitioner.

Section 203 of the NIRC grants respondent three years to assess a taxpayer, counted from either (a) the last day prescribed by law for the filing of a return; or (b) the day of the return's filing when the same is beyond the period prescribed by law:

> SECTION 203. Period of Limitation Upon Assessment and Collection. — *Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return*, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That *in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.* For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (Emphasis supplied.)

To recall, petitioner filed its AITR for TY 2009 on April 15, 2010, giving respondent until April 15, 2013 within which to issue his assessment. He issued the FAN on June 3, 2015, 1875 days after petitioner filed its AITR and 779 days after the lapse of the 3-year period.

However, the above provision identifies *Section 222 of the NIRC* as providing an exception to this three-year period. Subsection *(a)* of the same provides that when either the return is not filed at all or the taxpayer files a "false or fraudulent return with intent to evade taxes", respondent may assess the taxpayer within an extended period of 10-years from the discovery of the falsity, fraud, or omission:

SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

(a) *In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission*: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(Emphasis supplied.)

While this seems straightforward, the phrase "false or fraudulent return with intent to evade tax" has been a source of controversy for over a decade, spawning two incompatible interpretations.

The permissive interpretation sees the 10-year period as applicable so long as the return is either (a) false; or (b) fraudulent, with intent to evade tax. Under such an interpretation, the 10-year period is applicable even if no intent to evade tax is proven—it is enough for the return to fail to report sales, receipts, or income in an amount exceeding 30% of the declared amount or to claim deductions in an amount exceeding 30% of the actual deductions, following the explanation of a substantial underdeclaration of sales or overdeclaration of deductions in *Section 248(b) of the NIRC*.

The competing strict interpretation sees the 10-year period as applicable if the return is either (a) false, *with intent to evade tax*; or (b) fraudulent, with intent to evade tax. Under this interpretation, an intent to evade tax *must* be proven in order to justify the use of the extended 10-year period. While a substantial underdeclarartion of sales or overdeclaration of deductions constitutes *prima facie* evidence of falsity or fraud, under *Section 248(b) of the NIRC*, such is only *prima facie*, and the taxpayer's intent to evade tax must still be proven.

The issue was eventually settled in *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*[36] ("*McDonald's*") where the Supreme Court declared that only *intentional errors* can justify using the 10-year period. It thus espoused following the strict interpretation and the necessity of proving an intent to evade taxes before using said extended period.

In doing so, however, the Supreme Court reviewed the tumultuous history of its interpretation of the provision, acknowledging that it did not always back the strict interpretation. There were years when the prevailing jurisprudence allowed the use of the permissive interpretation. With that in mind, did respondent believe in good faith that the 10-year period was

[36] G.R. No. 247737, August 8, 2023.

applicable when he failed to issue an assessment within the regular 3-year period?

We find in the negative.

The Supreme Court promulgated *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*[37] ("*Goodrich*") on February 24, 1999, which supported the strict interpretation. This was not overturned until *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[38] ("*Samar*") in May 10, 2014, which ruled that substantial underdeclaration was enough to justify the 10-year period. While the Supreme Court would go back and forth on its interpretation of the controversial provision in the following years, until finally settling on the strict interpretation in *McDonald's*, the relevant dates here are those of the promulgation of *Goodrich* and *Samar*.

To recall, petitioner filed its AITR on April 15, 2010, the lapse of the 3-year period occurred on April 15, 2013, and respondent issued his FAN on June 3, 2015. Although the FAN was issued while *Samar*'s use of the permissive interpretation was the prevailing jurisprudence, the 3-year prescriptive period lapsed while *Goodrich*'s interpretation was still in effect. Considering that respondent could not have known that the relevant jurisprudence would change almost a year later, he should have known that, absent any proof of intent to evade tax, his right to assess would prescribe on April 15, 2013. He should have issued his assessment within three years and not simply held out for the chance that jurisprudence would change and allow him to use an alleged substantial underdeclaration to justify following the 10-year period.

In short, (1) the strict interpretation of the prescriptive period is applicable here, as it was the prevailing jurisprudence during the relevant period; and (2) respondent could not have simply believed in good faith that the permissive interpretation was applicable, given said prevailing jurisprudence.

This does not mean that the 10-year period is inapplicable here. Respondent would have shown that his use of the extended period was justified if he was able to prove an intent to evade taxes on the part of petitioner. Did he?

He did not.

---

[37] G.R. No. 104171, February 24, 1999.
[38] G.R. No. 193100, May 10, 2014.

In his Answer, respondent simply claims that the 10-year period is applicable. Nowhere in his arguments, his evidence, or the testimony of his witness does he even allege an intent to evade tax. As he did not even try to do so, respondent certainly did *not* prove fraudulent intent in petitioner's AITR.

Given that (1) the strict interpretation of *Section 222(a) of the NIRC* is applicable here; and (2) respondent failed to prove an intent to evade tax on petitioner's part, respondent had only three, *not* 10, years to assess petitioner for any deficiency taxes for TY 2009. Given that he issued his assessment after the lapse of the 3-year period, said assessment had already prescribed.

Respondent's assessment and the Assessment Notices that embody it are thus void due to prescription.

There is no need to discuss the parties' other arguments as the assessment is, as stated, void.

ACCORDINGLY, the instant *Petition for Review*, filed on May 17, 2018, is hereby **GRANTED**. The assessment against petitioner for TY 2009 and the Final Assessment Notice, dated June 3, 2015, are **VOID**.

Respondent and his agents are **PROHIBITED** from collecting the taxes sought by the void assessment.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

On leave
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice