**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**JUMBO EAST REALTY INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8380**

Members:

**CASTAÑEDA, JR.**, Chairperson,
**CASANOVA**, and
**COTANGCO-MANALASTAS, *JJ.***

Promulgated:

MAY 1 8 2015 3:46 pm

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# RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For this Court's resolution is petitioner's **Partial Motion for Reconsideration** filed on March 31, 2015, with respondent's **Comment (To Petitioner's Partial Motion for Reconsideration)** filed on April 20, 2015.

In the said motion, petitioner avers that the testimony of Rafael M. Lentejas II – the revenue officer who conducted the reinvestigation of petitioner's tax liabilities for the taxable year 2006, was withdrawn during the June 5, 2013 hearing. Meanwhile, the withdrawal of the witness' testimony was made after he admitted that there was no understatement of income of petitioner for 2006. Furthermore, respondent's Exhibit "37" states that "Further evaluation of accounting records and documents submitted revealed that subject taxpayer has complied with the existing provisions of the National Internal Revenue Code, as amended." As such, petitioner argues that with the withdrawal of the witness' testimony and respondent's admission that there was no Preliminary Assessment Notice (PAN), the subject assessments are rendered invalid and ineffectual.

On the other hand, respondent states that it duly issued the PAN dated December 6, 2010 and that petitioner's allegation as to the non-issuance of PAN pertains to the result of the reinvestigation. Respondent argues that there is no provision under the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended) or any BIR issuance, which requires the issuance of PAN after reinvestigation when the taxpayer has timely protested the Final Assessment Notice. What is required is for respondent to issue an administrative decision on a disputed assessment under Revenue Regulations No. 12-99 dated September 6, 1999. Lastly, respondent avers that the concept of no understatement of income and compliance with existing provisions of the NIRC of 1997, as amended, is not incompatible with the findings of tax deficiency. In the instant case, petitioner complied with the submission requirements but failed to substantiate its expenses which resulted to deficiency tax assessment.

The issues to be resolved by this Court are: (1) Whether or not respondent duly issued the PAN; and (2) Whether or not petitioner may use respondent witness' Judicial Affidavit and Exhibit "37" against the respondent, to warrant the reversal of the decision dated March 16, 2015.

**Respondent duly issued the PAN**

Petitioner contends that respondent failed to issue the PAN based on respondent counsel's motion to expunge the Judicial Affidavit of Rafael M. Lentejas II, and his manifestation that the witness' reinvestigation was not issued the corresponding PAN. Thus:

> "ATTY. DIOKNO : Your Honors, respondent would like to respectfully move the Honorable Court to expunge the Judicial Affidavit of the last witness, your Honors, Rafael Lentejas.

Considering that based upon the records, your Honors, his re-investigation of the tax liability of the petitioner was not issued corresponding Preliminary Assessment Notice, your Honors. Just to be able to expedite the proceedings, your Honors, so may we respectfully move for the filing of a Formal Offer.

JUSTICE CASTAÑEDA : Formal Offer?

ATTY. DIOKNO : Yes, your Honors.

JUSTICE CASTAÑEDA : So any comment on his Motion?

ATTY. YUSON : We vehemently object, your Honors. At this very late stage, your Honors, I am already cross-examined the witness for the respondent, your Honors.

JUSTICE CASTAÑEDA : What is the purpose of the cross-examination?

ATTY. YUSON : Your Honors, I have already started my cross-examination and I am half way through.

JUSTICE CASTAÑEDA : But they are withdrawing the testimony of that witness.

ATTY. DIOKNO : Because there was no Preliminary Assessment issued, your Honors, based on the reinvestigation, your Honors.

JUSTICE CASTAÑEDA : They are already admitting that there's no Preliminary Assessment.

ATTY. DIOKNO : The records would show, your Honors.

ATTY. YUSON : Are they admitting in effect, your Honors, that all the proceedings thereafter are invalid?

JUSTICE CASTAÑEDA : They are stating that they are withdrawing the witness' testimony to that effect that there was no Preliminary Assessment.

ATTY. YUSON : Your Honors, the thing is the witness has already made some admissions that are beneficial to petitioner.

JUSTICE CASTAÑEDA : It's going to be expunge. Withdrawn."[1]

Respondent's counsel explains that it issued the PAN dated December 6, 2010 and that the PAN he was referring to during the June 5, 2013 hearing pertains to the PAN in relation to the reinvestigation.

Verification of the records shows that respondent issued the PAN[2] dated December 6, 2010. Moreover, during the hearing dated December 3, 2012, respondent's witness Ms. Eleuteria Sagun testified on cross-examination that:

"ATTY. YUSON

Q : So you do not have idea what happened to the assessment notices after it left the office of Ms. Porio?

MS. SAGUN

A : Only one notice, sir the district office may be issued after the conduct of an investigation, our office was the one that sends Preliminary and Final Assessment Notices.

ATTY. YUSON

That would be all, Your Honors based on her affidavit."[3]

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[1] Transcript of Stenographic Notes (TSN) dated June 5, 2013, pp. 3-5.
[2] Exhibit "11", BIR Records, p. 186.
[3] TSN dated December 3, 2012, pp. 21-22.

Based from the foregoing, it appears that petitioner's counsel recognized that indeed, PAN was issued by respondent's office. In other words, his line of questioning reveals that he is inquiring as to the facts that transpired **after** the assessment notices were issued, and not whether the assessment notices, including PAN, were issued by respondent. *Ergo,* petitioner impliedly admitted the issuance of PAN by respondent.

Considering respondent's Exhibit "11" and petitioner's implied admission, the Court finds that respondent duly issued the PAN.

**Respondent witness' Judicial Affidavit and Exhibit "37" cannot be used as evidence against the respondent**

Anent hereto, petitioner avers that respondent's witness, Rafael M. Lentejas II, stated in his Judicial Affidavit that there was no understatement of income of petitioner for 2006. Moreover, respondent's Exhibit "37" states that "Further evaluation of accounting records and documents submitted revealed that subject taxpayer has complied with the existing provisions of the National Internal Revenue Code, as amended."

On the contrary, respondent argues that petitioner complied with the submission requirements but failed to substantiate its expenses which resulted to deficiency tax assessment.

It is noteworthy that the Judicial Affidavit of Rafael M. Lentejas II was already expunged from records during the hearing dated June 5, 2013. It necessarily follows, therefore, that the Court may not consider the same in resolving the present motion.

On the other hand, respondent did not formally offer Exhibit "37" as its evidence. Basic is the rule that the Court shall consider no evidence which has not been formally offered;[4] it should be excluded and rejected[5] and cannot be used for or against a party litigant.[6] As

[4] *People of the Philippines v. Saturnino Villanueva*, G.R. No. 181829, September 1, 2010.
[5] *Heirs of Pedro Pasag, et al. v. Sps. Lorenzo and Florentina Parocha*, et al., G.R. No. 155483, April 27, 2007.
[6] *Rebecca Ala-Martin v. Hon. Justo M. Sultan*, G.R. No. 117512, October 2, 2001.

such, the Court cannot likewise consider Exhibit "37" as evidence against the respondent.

In sum, the Court sees no cogent reason to disturb the Decision dated March 16, 2015 based on the grounds raised by petitioner in the present motion.

**WHEREFORE**, in view thereof, the instant Partial Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

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

**WE CONCUR:**

**CAESAR A. CASANOVA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice