Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ALPHA RIGGING & MOVING SYSTEMS, INC.,
Respondent.

CTA EB CASE NO. 1076
(CTA Case No. 8135)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, JJ.

Promulgated:
JUN 05 2015
11:25 a.m.

x---x

RESOLUTION

MINDARO-GRULLA, J.:

This resolves Commissioner of Internal Revenue's (CIR) "Motion for Reconsideration" of the Decision dated January 8, 2015 of this Court en banc, the dispositive portion of which states:

> *"**WHEREFORE**, premises considered, the petition is **DENIED**. The Decision of the Special Third Division of this Court in CTA Case No. 8135, promulgated on July 12, 2013 and its Resolution, promulgated on October 9, 2013, are hereby **AFFIRMED**. No pronouncement as to costs.*
>
> ***SO ORDERED**."*

CIR claims that the Court erred when it ruled that the assessment issued against respondent is void. CIR argued as follows:

1. "The jurisdiction of the Honorable Court over collection procedures of final and executory assessments is limited to the timeliness and validity of the collection procedure itself but not to inquire into the validity of the

undisputed assessments. To sanction the latter would be to allow indirectly what the law forbids to be done directly."

2. "Assuming the Honorable Court may allow a collateral attack on the year 2000 assessment despite the clear prohibition by law and jurisprudence, it was clear error to shift the burden of proof on the service of the assessment to petitioner. Even respondent's evidence shows that it was aware of the assessment all along. Thus, the denial of receipt was clearly an afterthought by respondent over four (4) years later and only upon service of the WDL. A bare denial, unsupported by its own evidence cannot operate to overcome a disputable presumption."

3. "Assuming the Honorable Court may allow collateral attack on the year 2001 assessment despite the clear prohibition by law and jurisprudence, it was clear error to invalidate the said assessment on a non-issue. The parties never considered this supposed failure to issue a year 2001 preliminary assessment as an issue in all their pleadings. As a matter of fact, respondent even admitted that it was indeed issued. Thus, not being an issue to the parties, and even more, the issuance of the year 2001 preliminary assessment being admitted by respondent, evidence on the matter would be immaterial and irrelevant."

In its Comment/Opposition, respondent claims that the motion was anchored on the same arguments discussed in the petition and that there were no additional factual or legal arguments that were not already discussed.

We resolve to deny the motion.

Void assessment bears no fruit. Failure to comply with the notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 will result to a denial of due process, irregardless of the failure to file a protest in the assessment.[1] In this case, CIR failed to prove the receipt of PAN and FAN. To reiterate,

> *"xxx, the Court is not precluded from determining compliance with the requirements of due process laid down by the law and by the BIR itself in the issuance of deficiency tax assessment to determine the validity of the warrant of distraint and levy.*
>
> *Evidently, the preliminary assessment notice and final assessment notice must be sent to the taxpayer informing the facts and the law on which the assessment was based. The sending of PAN and FAN to a taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities.*
>
> *In the case at bar, the Court's Division found that petitioner's witness testified that FLD and FAN 59/2000 and 2001 PAN were mailed and received by respondent, however, CIR failed to mark, offer, identify and admit as evidence any registry receipt and return card to prove the fact of mailing and receipt. Likewise we note in CIR's Answer to the petition before this Court in Division on alleged registry receipt and return card to prove the fact of mailing and receipt by the taxpayer, however, no evidence was marked, offered, identified and admitted during trial. This is clear error on the part of CIR, the omission to mark, offer, identify and admit during trial the registry receipt and return card or any other evidence to prove the fact of mailing and receipt by the taxpayer of the PAN and FAN cost the government the 2000/2001 assessment.*
>
> *As to CIR's claim that this Court in Division erred in invalidating the 2001 assessment for failure to serve the PAN when it is not an issue and that respondent even admitted it was informed of the PAN, we find no merit.*
>
> *A perusal of the respondent taxpayer's pre-trial brief reveals that among the issues raised is that CIR did not afford the taxpayer its right to due process". In addition,*

[1] Commissioner of Internal Revenue vs. Metro Star Superama Inc.,G.R. No. 185371, December 8, 2010.

> *the Court in Division, a court of competent jurisdiction is vested with the authority to resolve even unassigned issues and it can do so when such a step is indispensable or necessary to a just resolution of issues raised in a particular pleading or when the unassigned issues are inextricably linked or germane to those that have been pleaded. This Court find that the Court in Division did not err when it resolved an issue not specifically raised when the consideration of which is necessary in arriving at a just and complete resolution of the case. To reiterate, the sending of PAN to a taxpayer is part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made. CIR failed to mark, offer, identify and admit as evidence any registry receipt and return card to prove the fact of mailing and receipt. xxx."*

In sum, the basic issues have already been passed upon and no substantial argument has been adduced to warrant the reconsideration sought.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Official Business)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN RINGPIS-LIBAN
Associate Justice