REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MIFFI LOGISTICS CO., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9122

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

NOV 23 2018 10:45 Am

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RESOLUTION

MANAHAN, *J.:*

For the Court's resolution is respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 01 August 2018)* filed on August 20, 2018, with petitioner's *Comment/Opposition (Re: CIR's Motion for Reconsideration)* dated August 15, 2018), filed on November 5, 2018.

Respondent moves for the reconsideration of the Decision promulgated on August 1, 2018, the dispositive portion of which is quoted as follows:

> **"WHEREFORE,** the instant Petition for Review filed by MIFFI Logistics Co., is hereby **GRANTED.**
>
> Accordingly, the FAN/FLD issued by respondent for alleged deficiency income taxes for FY 2006 as well as the WDL issued against petitioner as a result thereof are hereby **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**

Respondent moves for the reconsideration of the Decision promulgated on August 1, 2018 on the following grounds:

1. The jurisdiction of the Court of Tax Appeals (CTA) is limited to the collection procedure post-assessment;
2. The assessment is already final, executory and demandable; and
3. The Warrant of Distraint and Levy (WDL) was validly issued after the assessment has become delinquent.

Respondent argues that the jurisdiction of the Court in this particular case, is limited to a determination of the validity of the collection process itself, i.e., whether the right of the revenue officers to collect has prescribed or whether the collection procedure is valid. Based on this premise, respondent asserts that the Court does not have jurisdiction to rule on the validity of the assessment itself because the latter has long become final and executory.

Respondent invites the attention of the Court to the statements contained in the protest letter filed by petitioner and maintains that it does not pass the test of validity because these are self-serving statements without any mention of the facts and the law on which the arguments should be based. Respondent goes on to conclude that a void protest is equivalent to not having a protest filed, making the assessments final, executory and demandable. He then concludes that the WDL is valid because it stems from a final and unappealable assessment making such taxes delinquent and collectible.

On the other hand, petitioner contends that the Court has jurisdiction to review not only the validity of the collection procedure itself but also on the validity of the assessment because challenges to the collection proceedings are normally premised on the nullity of the deficiency tax assessments thus giving the Court the authority to review and rule on the latter issue as well.

Petitioner also maintains that respondent's right to assess its deficiency taxes for fiscal year 2006 has already prescribed. It cites Section 203 of the 1997 National Internal Revenue Code (NIRC) providing a three (3) year period counted from the filing of the tax return, within which to issue an assessment.

Petitioner insists that there are no allegations of fraud or falsity of tax returns for the exceptional ten (10) - year period to apply.

Lastly, petitioner challenges the validity of the WDL as it was issued without legal basis pursuant to a void assessment.

A careful review of respondent's arguments reveal that the same is a mere rehash of the same facts and issues, which have already been passed upon extensively in the assailed Decision. Nonetheless, the Court shall discuss the points raised by the respondent.

There is no question that the Court has jurisdiction in determining the validity of the WDL issued by respondent falling as it is under the phrase "other matters" under Section 7 (a) (1) of Republic Act (RA) No. 1125 as implemented by Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA). Respondent no longer challenges this portion of the assailed Decision.

The main focus of respondent, however, is the Court's ruling on the validity of the assessment which he claims to have attained finality, hence may no longer be ruled upon by the Court.

Respondent's theory is untenable.

The validity of the WDL, in this case, is based on the premise that the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) are valid, meaning these documents must satisfy the conditions/requirements provided under relevant laws and its implementing regulations. Absent a valid FAN/FLD, no collection proceeding may ensue or may even be initiated by the revenue officers otherwise the same may be declared void. In this case, a conclusion of invalidity of the WDL or any tax collection proceeding for that matter, will have no legal basis if it is not accompanied by a ruling that the FAN/FLD were found to be void.

The Court, in the assailed Decision found the FAN/FLD defective for having been issued beyond the three (3) year period provided under Section 203 of the 1997 NIRC and no allegations of fraud or falsity justify the application of the extraordinary ten

(10) year period of prescription. We quote the relevant portions of the assailed Decision, thus:

> "Petitioner asserts that the income tax assessment embodied in the FLD was issued only on June 15, 2010 or beyond the three (3) year prescriptive period provided under Section 77 (B) of the 1997 NIRC in relation to Section 203 of the same Code.
>
> We find for the petitioner.
>
> Section 203 of the 1997 NIRC, as amended, provides for the period of limitation of assessment and collection of national internal revenue taxes, to wit:
>
> > "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."
>
> Section 222 of the 1997 NIRC, as amended, provides the exceptions to the above-mentioned period of limitation of assessment and collection of taxes, to wit:
>
> > "Section 222 . *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
> >
> > (a) In the case of false or fraudulent return with intent to evade tax or 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 the 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.
> >
> > (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."
>
> xxx xxx xxx
>
> Based on the foregoing provisions, the regular prescriptive period for the assessment and collection of taxes is three (3) years. The exceptional ten (10) year prescriptive period is applicable only if

> the taxpayer a) fails to file a return; b) files a false or fraudulent return with the intent to evade tax; c) there is a waiver of the prescriptive period of assessment of the tax which is agreed upon in writing by the Commissioner and the taxpayer.
>
> There is nothing in the FAN/FLD nor the accompanying Details of Discrepancy that would suggest that there were findings of fraud nor falsity in the returns filed by petitioner, save for the sentence appearing in the FLD that a 50% surcharge was being imposed.
>
> xxx xxx xxx
>
> It is a well -entrenched rule that fraud is not lightly presumed; fraud must be proven by clear and convincing evidence, mere preponderance of evidence not even being adequate. Fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most create only suspicion and the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.
>
> A mere cursory review of the FLD/FAN and Details of Discrepancy do not show that petitioner intended to defraud the government. **In fact, we believe that the FLD/FAN with the Details of Discrepancy issued by respondent do not pass the test of properly informing the taxpayer of the facts and the law on which the assessment is made in violation of the requirements under Section 228 of the 1997 NIRC and Section 3.1.4 of Revenue Regulations (RR) No. 12-99." (emphasis supplied)**

A careful review of the contents of the FAN/FLD with Details of Discrepancy discloses that they contain computations without the accompanying explanations that will clarify the alleged violations committed by petitioner to warrant the findings of tax deficiency, much less, the commission of fraud.

It is a well-entrenched rule that a void assessment bears no valid fruit.[1] And it may well apply to collection efforts originating from a void assessment.

In view of the foregoing, this Court finds no cogent reason to reverse the assailed Decision.

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 01 August*

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[1] CIR vs. Azucena T. Reyes and Azucena T. Reyes vs. CIR, G.R. Nos. 159694 and 163581 dated January 27, 2006.

2018) filed on August 20, 2018, is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice