REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1324 (CTA Case No. 8484)
-versus-	Present: DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
ROBERT CHRISTOPHER M. CARMONA, doing business under the name SAGA CASTING AND PRODUCTIONS, Respondent.	Promulgated: JUL 02 2018 3:43p.m.

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RESOLUTION

Fabon-Victorino, J.:

In his Motion for Reconsideration dated January 24, 2018,[1] petitioner assails the Decision dated December 20, 2017,[2] which affirmed the ruling of the Court in Division cancelling the deficiency Income Tax (IT) and Value-added Tax (VAT) assessment for calendar year (CY) 2007 he issued against respondent, on the ground that the Formal Assessment Notice (FAN) dated July 25, 2011 was issued

[1] Ibid. at pp. 128-140.
[2] *Rollo*, pp. 90-103.

beyond the three (3)-year prescriptive period mandated under Section 203 of the National Internal Revenue Code (NIRC), as amended.

Petitioner insists that the ordinary three-year prescriptive period under Section 203 of the NIRC, as amended, is not applicable in the present case. He avers that a comparison of respondent's ITRs and VAT Returns vis-à-vis the multiple computerized-matching systems and/or programs[3] utilized by the BIR yielded discrepancies equivalent to 400.72% of undeclared sales. In view the alleged significant under-declaration of sales,[4] a *prima facie* existence of false/fraudulent tax returns arises against respondent. On account of respondent's failure to rebut such presumption, the FAN dated July 25, 2011 was seasonably issued on August 11, 2011, or well-within the extraordinary ten-year prescriptive period under Section 222(b) of the NIRC, as amended.

In his Comment/Opposition,[5] respondent counters that the issue of false/fraudulent returns raised by petitioner was never invoked in his Preliminary Assessment Notice (PAN), FAN, Answer and Memorandum as to justify the application of the ten-year prescriptive period. Hence, such argument should not be considered for the first time on appeal. Further, petitioner's claim that he filed false/fraudulent ITRs and VAT returns are merely based on an erroneous presumption in the absence of any substantiation. To add, petitioner failed to duly establish by convincing proof his allegations of falsity/fraud.

THE RULING OF THE COURT

It is evident that the issues raised by petitioner in his *Motion for Reconsideration* are a repetition of the very same

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[3] Reconciliation of Listing for Enforcement System (RELIEF), Tax Reconciliation System (TRS) and Third Party Matching - Bureau of Customs (TPM-BOC) Data Program.
[4] Failure to report, among others sales exceeding thirty percent (30%) of that declared per return constitutes substantial under-declaration of sales which creates a *prima facie* evidence of false or fraudulent return. See Section 248(B) of the NIRC, as amended.
[5] *Rollo*, pp. 145-151.

issues he cited in all his pleadings filed with the Court in Division and before the Court *En Banc.* All these issues were meticulously scrutinized and judiciously passed upon by Court *En Banc* in the impugned Decision of December 20, 2017, specifically in pages 7 to 13 thereof. To repeat, the absence of falsity or fraud in respondent's filing of tax returns warrants the application of the ordinary three-year prescriptive period to assess under Section 203 of the NIRC, as amended. Since petitioner's FAN dated July 25, 2011, was issued on August 11, 2011, or beyond the permissible statutory periods[6] to assess deficiency taxes, the assessment is clearly ineffectual and without legal consequence, effectively warranting its cancellation and withdrawal.

Even granting *arguendo* that the assessment was seasonably issued; the same will not save the day for petitioner as the subject FAN dated July 25, 2011 is not an assessment in the eyes of the Tax Code and jurisprudence.

An assessment, as contemplated in the Tax Code, is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there *definitely set and fixed.*[7] Its primary purpose is to determine the amount that a taxpayer is liable to pay.[8] Thus, a FAN, which is still subject to modification is not an assessment envisaged by the Tax Code and settled case-law on the matter.

Note that while the subject FAN dated July 25, 2011 provides for the computation of respondent's purported tax liabilities, the amount remains undetermined as the tax due and interest thereon are still subject to adjustment depending on actual date of payment, thus:

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[6] The last day to assess deficiency Income Tax falls on April 15, 2011. While for deficiency VAT covering the four (4) quarters of CY 2007, the last day to assess are as follows: April 25, 2010, July 31, 2010, October 25, 2010 and January 31, 2011 respectively.

[7] See *Adamson vs. Court of Appeals,* G.R. No. 120935, May 21, 2009.

[8] See *Tupaz vs. Hon. Ulep,* G.R. No. 127777, October 1, 1999.

> *Please note that the interest and the total amount due will have to be adjusted according to the actual date of payment.[9]

Undeniably, the amount of tax liability of respondent is dependent on the time respondent is able to satisfy its tax obligation to the government. In other words, the FAN is infirm for it does not contain a clear and definite amount of tax to be paid by respondent.

Further, the said FAN as well lacks a definite due date for payment of tax, which is likewise fatal to petitioner's cause.

Section 6(A)[10] of the NIRC, as amended, decrees among others that an internal revenue tax assessment shall be paid by the taxpayer only upon notice and demand from petitioner or his authorized representative. An assessment therefore must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period.[11]

The Court cannot also be oblivious to the penultimate paragraph of petitioner's FAN dated July 25, 2011 which states that the due dates for payment of tax and increments thereon are reflected in the enclosed assessment notices, *viz*:

> In view thereof, you are hereby required to pay the aforesaid tax liability through the duly authorized agent bank (AAB) in which you are enrolled <u>within the time</u>

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[9] Exhibit H, BIR Record, p. 388.

[10] **SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** -

(A) Examination of Return and Determination of Tax Due. Xxx

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. xxx

[11] See *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,* G.R. No. 128315, June 29, 1999.

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shown in the enclosed assessment notice. xxx[12] (underscoring supplied)

However, an examination of the assessment notices[13] appended to the FAN dated July 25, 2011 readily reveals that the space for the due dates for payment of tax obligation and increments thereon are unaccomplished. Clearly, respondent's obligation to pay the tax may not be deemed to have accrued since the alleged assessment lacks a definite and fixed period to settle the same. In other words, respondent cannot be made to account for taxes which in the first place are not legally demandable.

Article 2254 of the Civil Code provides that no vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others. A right cannot spring in favor of a person from his own void or illegal act or omission.[14] For his utter neglect to explicitly state in the FAN dated July 25, 2011 the twin legal requirements of: 1) fixed amount of tax to be paid; and 2) definite period to settle the same, petitioner cannot claim any right emanating from such illegal assessment. It cannot therefore in turn be utilized as basis to collect taxes since a void assessment bears no valid fruit.[15]

On this note, let it be stressed that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.[16] But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his

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[12] See Note 9.
[13] Ibid. at pp. 385-386.
[14] See *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*, G.R. No. 194105, February 5, 2014.
[15] See *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.
[16] *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012.

tracks if the taxpayer can demonstrate, as obtaining in this case, that the law has not been observed.[17]

WHEREFORE, petitioner Commissioner of Internal Revenue's Motion for Reconsideration dated January 24, 2018 is **DENIED**, for lack of merit. The Decision dated December 20, 2017 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I maintain my Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I maintain my Dissenting Opinion dated December 20, 2017)
CATHERINE T. MANAHAN
Associate Justice

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[17] See *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.,* G.R. No. 198677, November 26, 2014, citing *Commissioner of Internal Revenue vs. Algue, Inc.,* G.R. No. L-28896, February 17, 1988.