19-000042-0094

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10018

JOWELLE`S AUTO PARTS, INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

BUREAU OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. DOROTHY JOY A. CAY-AN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

GALIAS & RIVERA LAW OFFICES
3rd Floor, Prestige Tower
F. Ortigas Jr. Road, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **April 2, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 2, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

JOWELLE'S AUTO PARTS, INC.,	**CTA Case No. 10018**
Petitioner,	Members:
-*versus*-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
BUREAU OF INTERNAL REVENUE,	Promulgated:
Respondent.	APR 02 2024; 9:10AM

x- -x

RESOLUTION

MANAHAN, *J.*:

For resolution are the following:

1. Petitioner's *Motion for Partial Reconsideration posted* on October 27, 2023 and received by the Court on November 8, 2023, with respondent's *Opposition (Re: Petitioner's Motion for Partial Reconsideration dated 27 October 2023)* filed via email on November 29, 2023; and

2. Respondent's *Motion for Partial Reconsideration (Re: Decision Promulgated on 5 October 2023)* posted on November 3, 2023 and received by the Court on November 8, 2023, without petitioner's comment.[1]

Both parties move for the partial reconsideration of the Court's Decision promulgated on October 5, 2023 (assailed Decision) which partially granted petitioner's Petition for Review relative to the tax deficiency assessments issued against it for

[1] Records Verification dated December 18, 2023, Docket, Vol. II, p. 1006.

taxable years (TYs) 2011 to 2013 with the corresponding Warrant of Distraint and Levy (WDL) dated January 30, 2019.

Petitioner's Motion for Partial Reconsideration

Petitioner moves for the cancellation of all of the deficiency tax assessments issued by respondent for TYs 2011 to 2013 on the ground that its right to due process was violated by respondent's failure to observe the proper procedure prescribed by the relevant provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and its implementing regulations.

Petitioner cites the alleged improper issuance of a Preliminary Collection Letter (PCL) instead of issuing a Final Decision on Disputed Assessment (FDDA) which totally disregarded the arguments propounded in its protests. Petitioner considers this a transgression of its right to due process, citing the Decision of the Court of Tax Appeals (CTA) in the case of *Joselito B. Yap vs. Bureau of Internal Revenue*[2] and the Supreme Court Decision in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. (Avon* case*)*.[3]

Petitioner further dwells upon the contents of the PCL as mere reiterations of the findings stated in the Final Assessment Notices (FANs)/Formal Letter of Demand (FLD), leaving serious doubts on whether respondent appreciated and considered the arguments stated in the protest letters and the accompanying supporting documents.

Petitioner requests the Court to reconsider its original stance and declare the PANs, FANs and the PCL issued for said TYs, void and without any effect. It did not, however go into the details of the substantive aspects of the assailed Decision, i.e., the Court's findings relative to its tax liabilities and their corresponding computations for the TYs 2011 to 2013.

Respondent, on the other hand, opposes the motion of petitioner for being *pro forma* based on the following observations, to wit:

---

[2] CTA Case No. 10063 dated November 29, 2022.

[3] G.R. Nos. 201398-99, October 3, 2018.

1. It failed to specifically point out the findings and conclusions of the judgment or final order that are not supported by the evidence or contrary to law;
2. It did not include a notice of hearing; and
3. Petitioner failed to set the motion for hearing.

Further, respondent dismisses the contentions of petitioner in its motion as being mere reiterations of the issues already passed upon and discussed at length by the Court in the assailed Decision, hence, should be denied.

Respondent's Motion for Partial Reconsideration

Respondent submits that the Court erred in its conclusion that respondent's right to assess petitioner's value-added tax (VAT) liabilities for the four (4) taxable quarters of TY 2011 and the first quarter of TY 2012 has already prescribed. On the contrary, respondent maintains that the ten (10)-year period to assess applies in the instant case because the discrepancies found in petitioner's VAT returns for the said periods constitute filing of false returns, which would justify the application of the said extraordinary period pursuant to Section 222(a) of the 1997 NIRC, as amended.

Respondent further contends that the filing of a false return exposes the petitioner to the fifty percent (50%) surcharge for its deficiency income tax, VAT and Improperly Accumulated Earnings Tax (IAET) for TY 2012 as well as its deficiency income tax and VAT for TY 2013.

Lastly, respondent emphasizes that undeclared purchases constitute undeclared revenue and that the taxable income per audit should be the basis in computing petitioner's IAET for TYs 2011 and 2012.

Respondent alternatively points out that assuming petitioner's amended taxable income is the correct basis in computing its IAET, the Court still committed an error in failing to include its Income Excluded from Gross Income in the computation. *cen*

As earlier mentioned, petitioner failed to file its comment or opposition to respondent's motion within the time prescribed by the Court.

RULING OF THE COURT

We find the arguments of both parties to be without merit. Nonetheless, this Court deems it prudent to first address respondent's assertion/observation, that petitioner's *Motion for Partial Reconsideration* is *pro forma* for failure to include a notice for hearing.

We find the argument of respondent to be without merit.

Petitioner's Motion for Partial Reconsideration was posted on October 27, 2023 under the current 1997 Revised Rules of Civil Procedure as amended by A.M. No. 19-10-20-SC[4] (New Rules) which deleted the requirement for a notice of hearing previously provided under Section 5 of Rule 15.[5] Now under Section 6 of Rule 15 of the New Rules, the Notice of Hearing on litigious motions such as a motion for reconsideration is discretionary on the part of the court, hence, should not be strictly applied and/or mandatorily required on litigious motions filed by the movants. To reiterate, we find that the discretion given to the courts to set the case for hearing on litigious motions under the New Rules removes the mandatory requirement of including a Notice of Hearing in litigious motions because the court, may at its option, resolve the motion on the basis of the documents/pleadings submitted by the parties without the need of a court hearing.

We quote Section 6 of Rule 15 of the 1997 Revised Rules of Civil Procedure as amended by A.M. No. 19-10-20-SC as follows:

---

[4] Took effect on May 1, 2020.

[5] **"Rule 15**
Motions

Sec. 5. *Notice of Hearing.* – The notice of hearing shall be addressed to all the parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

> **"Rule 15**
> **Motions**
>
> Sec. 6. ***Notice of Hearing on litigious motions discretionary.*** – The court may in the exercise of its discretion, and if deemed necessary for the resolution, call a hearing on the motion. The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing." (*emphasis supplied*)

In fine, the Court finds that the lack of a Notice of Hearing in petitioner's *Motion for Partial Reconsideration* is not fatal and will not cause its dismissal on this ground alone.

We now proceed to rule on the other issues raised by the parties.

Ruling on Petitioner's Partial Motion for Reconsideration

Petitioner asserts that respondent failed to follow the procedural due process by issuing a PCL instead of an FDDA in response to the protest letter and reiterating therein in *verbatim*, the findings embodied in the FAN. It further cited the case decided by the CTA entitled *Joselito B. Yap vs. Bureau of Internal Revenue*[6] where the Court applied the decision of the Supreme Court in the *Avon* case and allegedly concluded that respondent's mere repetition of his previous findings in the PCL is considered a violation of a taxpayer's right to due process.

We find petitioner's reliance on the ruling of the Supreme Court in the *Avon* case misplaced. The facts obtained in the *Avon* case are not on all fours with the instant case. In the *Avon* case, the violation of due process was due to the issuance by the Commissioner of Internal Revenue of the assessments (PAN and the FAN) making no reference to Avon's arguments in its protest against the PAN. This was interpreted by the Supreme Court as a deprivation of Avon's right to due process and declared the assessments null and void.

In the instant case, there was no issue raised as to the contents of the PAN and the FAN that would call for the application of the ruling in the *Avon* case. Moreover, the Court

---

[6] CTA Case No. 10063 dated November 29, 2022.

in the assailed Decision, ruled that the official notices such as the LOA, the PANs and the FLDs were all duly served to petitioner. The Court, in this Resolution, finds that the requirement of Section 228 of the 1997 NIRC, as amended, *i.e.*, to be informed of the law and the facts on which the assessment is made, is deemed fulfilled not only by proof of valid service of the official notices such as the PANs and the FANs but is evident from the Legal Petition Notices filed by petitioner against the three (3) FLDs which the Bureau of Internal Revenue (BIR) and the Court, found to be equivalent to petitioner's protest/request for reinvestigation.

The Supreme Court in the case of *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*,[7] emphasized that the requirement of informing the taxpayer of the legal and factual bases of the assessment is substantially fulfilled when said taxpayer was able to file an "effective" protest. Hence, this Court finds that there was no violation of petitioner's right to due process in so far as the issuance of the PANs, FANs and the PCL is concerned.

Ruling on Respondent's Motion for Partial Reconsideration

Respondent disagrees with the finding of the Court that his right to assess petitioner's deficiency VAT for the four (4) quarters of TY 2011 and first quarter of 2012 has already prescribed because the ten (10)-year extraordinary period to assess applies in the case of filing a false return.

We find this argument specious and must be struck down.

The records do not show that respondent made any allegations of falsity or fraud that would justify the application of the ten (10)-year period to assess. Neither did the FANs/FLDs issued nor the Answer filed by respondent to the Petition for Review refer to any allegation of fraud or falsity of the tax returns. In the recent case of *McDonald's Philippines Realty Corporation vs. Commissioner of Internal Revenue (McDonald's* case*)*,[8] the Supreme Court provided a lengthy discourse on the difference between a "fraudulent return" and a "false return," effectively disregarding its previous ruling in the case of *Aznar*

---

[7] G.R. No. 193100, December 10, 2014.
[8] G.R. No. 247737, August 8, 2023.

vs. Court of Tax Appeals and Collector of Internal Revenue.[9] This latest jurisprudence enunciated the principle that unintentional or inadvertent errors do not necessarily constitute outright fraud to call for the application of the ten (10)-year period to assess. We quote the following pertinent portions of the *McDonald's* case:

> "Thus, it must be understood that falsity and/or fraud with respect to any tax return cannot be presumed to the extent that these are relied upon as grounds for the extension of the assessment period to 10 years. In keeping with their duty to preserve due process in tax assessments, as enunciated in *BF Goodrich, Fitness by Design, Samar Electric, Asalus* and *Spouses Magaan,* the **tax authorities bear the burden of establishing, with clear and convincing proof, the existence of grounds warranting the application of the 10 year period.**" (*emphasis and italics in the original*)

Fraud is a question of fact that should be alleged and duly proven.[10] In the instant case, the lack of a clear allegation and proof that fraud was committed by petitioner in filing its tax returns for the period covered by the assessments, serves as a valid excuse to retain and apply the ordinary three (3)-year period to assess deficiency taxes. The conclusion of prescription of respondent's right to assess deficiency VAT for the four (4) quarters of TY 2011 and first quarter of 2012, therefore remains.

Lastly, respondent additionally disagrees with the Court in the computation of the IAET for TYs 2011 and 2012. It contends that the Taxable Income Per Audit of the BIR should have been the basis of the IAET computation which already included the Income Excluded from Gross Income pursuant to Revenue Memorandum Circular (RMC) No. 35-2011.

The records belie respondent's claim.

On the contrary, the FLD does not show that the subjects comprising the Taxable Income Per Audit as found by respondent for TY 2011 includes the Income Excluded from Gross Income. We copy the figures per FLD as found by

---

[9] G.R. No. L-20569, August 23, 1974.
[10] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan,* G.R. No. 232663, May 3, 2021.

respondent after audit which was laid out in the assailed Decision dated October 5, 2023, and we quote:

> "Per the pertinent FLD, respondent found petitioner liable for deficiency income tax, inclusive of penalties, as follows:

Taxable Income per Return		₱4,107,253.41
Adjustments per Audit:		
Disallowed Unsupported Expenses	**7,622,438.43**	
Undeclared Expenses	**398,878.25**	
Unsupported Purchases	**60,015,022.15**	68,036,338.83
Taxable Income per Audit		₱ 72,143,592.24
Income Tax Due		₱ 21,643,077.67
Less: Tax Paid per return		983,306.29
Deficiency Income Tax		₱ 20,659,771.38
Add: 50% Surcharge	₱10,329,885.69	
20% Interest from 04-15-2012 to 06-22-2015	13,348,507.84	23,678,393.53
Total Deficiency Income Tax		**₱ 44,338,164.91"**

From all the foregoing, the Court finds no cogent reason to reverse or modify the Court's Decision dated October 5, 2023.

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration* and respondent's *Motion for Partial Reconsideration (Re: Decision Promulgated on 5 October 2023)* are **DENIED** for lack of merit.

Accordingly, the Decision of the Court in the above-captioned case dated October 5, 2023, is hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice