REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONWIDE HEALTH SYSTEMS BAGUIO, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9507

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, ***JJ.***

Promulgated:
MAR 11 2020 4:19 pm

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RESOLUTION

BACORRO-VILLENA, J.:

On three grounds, respondent Commissioner of Internal Revenue (**CIR/respondent**) assails the Decision dated 15 October 2019 in the above-entitled case. In his Motion for Reconsideration (**MR**) and in his bid to reverse the said decision, respondent contends that the Court erred (1) in finding that his assessment of petitioner has not become final and executory; (2) in invalidating its Formal Letter of Demand (**FLD**) because there was no Notice of Informal Conference (**NIC**) sent to petitioner; and, (3) in ruling that there was no due date on the FLD and/or Final Assessment Notice (**FAN**).

Amplifying on the three issues raised, respondent argues that the reckoning period to appeal could not be counted from petitioner's receipt of the Warrant of Distraint and Levy (**WDL**) since Section 228[1]

[1] **Sec. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:

of the National Internal Revenue Code (**NIRC**), as amended, has already provided the remedies and prescriptive periods to question his actions. He claims that none pertains to the reckoning of the appeal period from the receipt of the WLD. He also contends that petitioner could no longer question the validity of the FLD on appeal as this was never raised as an issue on the administrative level. Moreover, it was error for the court to deem the NIC as requirement for the validity of the FLD. According to him, BIR Regulation No. 18-2013[2] already removed the need to issue an NIC. At any rate, the FLD, along with the attached "Assessment Notices", indicated the due date for the payment of taxes on "27 November 2015".

In retort, through its Comment, petitioner insists that this Court acquired jurisdiction over its appeal since the void assessment never became final. Moreover, the Court could not err in tackling the validity

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(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[2] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

of the assessment since this was indispensable in the resolution of the case. Besides, an appellate court like the Court of Tax Appeals has broad discretionary power to waive the lack of assignment of error and thus may consider errors not assigned in a petition or appeal. On respondent's claim that the FLD was valid, petitioner maintains that it was without a due date for payment thus failing to comply with the requirements of substantive and procedural due process.

We resolve below.

Respondent CIR's MR is bereft of merit.

Respondent CIR is questioning the reckoning of the 30-day period to file a petition for review before this Court. The Court, in the assailed Decision, ruled that the assessment did not become final because the reckoning period should start from the receipt of the WDL. In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[3], the Supreme Court declared:

> ...
> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.[4]
> ...

Consistent with the above, this Court may validly look into the regularity of the issuance of the WDL and reckon the 30-day period to appeal before it from petitioner's receipt thereof. This proceeds from the fact that the **WDL constitutes an act of respondent on "other matters" arising under the NIRC or other laws administered by the Bureau of Internal Revenue (BIR)**, which could similarly be the subject of an appropriate appeal with the CTA.[5]

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3 G.R. No. 162852, 16 December 2004, 447 SCRA 214.
4 Emphasis supplied.
5 *Jowelles Autoparts, Inc. vs. Bureau of Internal Revenue, represented by the Regional Director, Revenue District 15*, CTA EB Case No. 1594, 02 April 2018.

Considering further that the issuance of WDL is provided under Sec. 205 (a) of the NIRC, as amended[6], the action questioning the validity thereof (as in the instant case) falls squarely under the phrase "other matter arising from the NIRC", pursuant to Section 7 (a) (1)[7] of R.A. No. 1125, as amended.

In the assailed Decision, this Court stated:

> ...
> As a rule, the warrant of distraint and levy is proof of the finality of the assessment and renders hopeless a request for reconsideration, being a tantamount to an outright denial thereof and makes the said request deemed rejected. From the foregoing, the 30-day period within which to file a Petition for Review with this Court should be reckoned from the petitioner's receipt of the WDL on November 18, 2016 or until **December 18, 2016**. Hence, when the appeal was filed on December 16, 2016, only 28 days of the reglementary period has been consumed. There is thus no merit in respondent's claim that petitioner's remedy of appeal has lapsed and that this court failed to acquire jurisdiction.
> ...

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6 **SEC. 205.** *Remedies for the Collection of Delinquent Taxes.* - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

> (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and,
> (b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than One hundred pesos (P100).

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon.

7 **Sec.** 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.]

...

As regards the issue on the absence of the due date on the FLD invalidates the assessment, such issue has been already been passed upon extensively in the assailed Decision.

Moreover, with regard to respondent's contention that even assuming that the FLD failed to indicate the due date thereon, it was nevertheless accompanied by BIR Form No. 0401 (Audit Result/Assessment Notice)[8] which provides for the due date of "27 November 2015", the Court finds this argument a mere rehash and the Court likewise already duly considered and discussed the same in the assailed Decision.

Incidentally, while respondent insists that the due date appeared on the "Assessment Notices", there was no proof proffered that petitioner actually received them. The latter only admitted the receipt of the FLD. Again, we quote the pertinent portion of the Decision on the matter:

> ...
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> ... [R]espondent contends that petitioner received the assessment notice, together with the FLD dated 27 August 2015, on 15 September 2015 (as evidenced by the Registry Return Receipt). A scrutiny of the said Registry Return Receipt does not indicate the letter/s or document/s delivered to petitioner.
>
> In the case of *Barcelon, Roxas Securities, Inc. [now known as UBP Securities, Inc.] v. Commissioner of Internal Revenue,* the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.
>
> In the testimony by way of a Judicial Affidavit, petitioner's treasurer, Benitez, directly denied the receipt of an assessment notice from the BIR; what she admitted was the receipt of the FLD dated August 27, 2015. The direct denial makes it incumbent upon respondent to prove that the assessment notice which he claimed to have been mailed together with the FLD was indeed received by petitioner. Unfortunately, aside from not actually showing that it was the FLD that was sent to petitioner (and duly received by it), this registry receipt was also not properly authenticated. It is settled that receipts for registered letters and return receipts must be properly authenticated in order to serve as proof of receipt of the letters.[9]
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> ...

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8 Exhibit "R-12-A", BIR Records.

9 Citation and footnotes omitted.

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Lastly, as to the NIC, nowhere in the Decision did this Court declare that the absence of NIC from BIR invalidated the latter's assessment. On the contrary, the Court found that BIR was able to issue a notice informing petitioner of its tax deficiency and while not strictly denominated as NIC, the same satisfied the requirements of due process. At any rate, to date, the NIC remains part of the procedure in the issuance of deficiency assessment *per* Revenue Regulation (**RR**) No. 7-2018.[10]

WHEREFORE, with the foregoing, respondent Commissioner of Internal Revenue's Motion for Reconsideration on the 15 October 2019 Decision is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

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

10 Reviving RR No. 12-1999 on the issuance of NIC.