REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

UP NORTH PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10208

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
DEC 04 2024 4:10 pm

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RESOLUTION

RINGPIS-LIBAN, J.:

Before the Court is petitioner's *Motion for Reconsideration [Re: Decision dated 25 June 2024]* filed on July 12, 2024, with respondent's *Comment/Opposition (to Petitioner's Motion for Reconsideration to the Decision dated June 25, 2024)* posted on August 6, 2024, and received by the Court on August 12, 2024.

On June 25, 2024, the Court promulgated a *Decision* upholding respondent's deficiency assessments for income tax, value-added tax (VAT), expanded withholding tax (EWT), documentary stamp tax (DST), and compromise penalties against petitioner in the aggregate amount of ₱717,786,038.34, for being *deemed as final and executory* due to petitioner's failure to timely file a valid administrative appeal with respondent, the dispositive portion of which is quoted below:

> "**ACCORDINGLY**, premises considered, the Petition for Review is hereby **DISMISSED** given that the BIR's Final Assessment Notice, dated April 11, 2013, and Decision, dated September 26, 2019, assessing petitioner for deficiency income tax, VAT, EWT, DST and compromise penalty in the aggregate amount of ₱717,786,038.34, including increments, for the taxable year 2009, have already become final, executory and demandable.
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> **SO ORDERED.**"

In its motion, petitioner prays that the Court reconsider the above Decision based primarily on the following grounds, *viz.*:

I.
WITH DUE RESPECT, THE *FDDA* HAS NOT BECOME FINAL AND EXECUTORY SINCE PETITIONER UP NORTH TIMELY FILED A VALID ADMINISTRATIVE APPEAL WITH RESPONDENT CIR UNDER THE PROVISIONS OF SECTION 228 OF THE NIRC, AS IMPLEMENTED BY RR NO. 18-2013.

II.
IN ANY EVENT, THE *FDDA* IS VOID AND COULD NOT THEREFORE, ATTAIN FINALITY.

III.
EVEN ASSUMING THAT THE *FDDA* AND ASSESSMENTS ISSUED BY THE BIR ARE NOT VOID, THEY WERE NEVERTHELESS ERRONEOUS, AS HAS BEEN SHOWN BOTH IN THE *PROTEST TO THE FAN* AND FURTHER PROVEN BY THE FINDINGS OF THE ICPA, WHICH REMAIN UNCONTROVERTED BY RESPONDENT CIR.

As to the first ground, petitioner asserts that the Final Decision on Disputed Assessment (FDDA) dated February 1, 2018 has not become final and executory since it was able to timely file a valid administrative appeal with respondent, in accordance with the provisions of Section 228 of the National Internal Revenue Code (NIRC), as implemented by Revenue Regulations (RR) No. 18-2013.[1] Petitioner argues that its administrative appeal was actually a request for reconsideration and was only *mislabeled* as a request for reinvestigation by a non-lawyer and non-tax practitioner, Ms. Susan J. Secreto, petitioner's Chief Finance Officer. Petitioner continues that Ms. Secreto cannot be faulted for the misusage of the term since it is already settled that the nature of the pleading is to be determined by the allegation contained therein. Petitioner further points out that even respondent himself did not take issue in the mislabeling of the appeal to the FDDA – and took cognizance of the same as a request for reconsideration– given that its basis for denial was the supposed failure to raise any issue with the FDDA. In any case, petitioner maintains that the said appeal was sufficient in form and substance and, *assuming arguendo,* that the appeal to the FDDA was defective, substantial justice merits the relaxation of the rules of procedure to prevent the imposition of deficiency tax as a consequence of mislabeling the administrative appeal as one for reinvestigation.

[1] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment," dated November 28, 2013.

With regard to the second ground, petitioner insists that the tax assessments are *void* for failing to state their legal and/or factual bases, which violate petitioner's right to due process of law. Petitioner also reiterates the allegations detailed in its *Petition for Review* filed on November 8, 2019 and *Memorandum* filed on May 19, 2023,[2] in support of its position that respondent's deficiency tax assessments contained in the Final Assessment Notice (FAN) dated April 11, 2013 and FDDA dated February 1, 2018 should be declared void.

Finally, as to third ground, petitioner asserts that even assuming that the FDDA and deficiency assessments were valid, the computations therein were nevertheless erroneous as shown in petitioner's protest to the FAN. As such, petitioner submits that to hold it as having defaulted from its right to challenge the assessed amount based solely on a mistake in language in its administrative appeal would result in manifest injustice especially since the independent certified public accountant (ICPA), Ms. Madonna S. Dayego, found in her uncontroverted ICPA Report a gross disparity between the basic tax assessed by respondent in the amount of ₱233,145,782.58, and her evaluation which is only in the amount of ₱10,620,510.06.

On the other hand, in his Comment, respondent asserts that paragraph 3.1.4 of RR No. 18-2013 is plainly worded and clear on the requirements for a valid administrative appeal to the Commissioner of Internal Revenue (CIR) to be misinterpreted – even by a non-lawyer. Respondent contends petitioner's excuse that the administrative appeal to the FDDA was merely mislabeled as request for reinvestigation, seeing that the same categorically shows that the intention was to appeal to the CIR by request for *reinvestigation* and *not reconsideration.* Respondent continues that not only was a request for reconsideration never mentioned in the appeal, but it is also hard to believe that petitioner would tap the services of an inexperienced attorney-in-fact, considering the enormous amount involved in the assessment is ₱717,786,038.34. Respondent further points out that being the Chief Financial Officer, Ms. Secreto is a licensed certified public accountant which is definitely capable of distinguishing reinvestigation from reconsideration by virtue of her profession.

Lastly, respondent maintains that the assessments contained factual and legal bases, as the PAN, FAN and FDDA in issue do have details of discrepancies that contain the facts and the law upon which the assessments are based. Respondent likewise assails petitioner's assertion that the ICPA Report was uncontroverted claiming that it was disputed in his *Memorandum* filed on June 7, 2023.

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[2] Docket (Vol. I), pp. 6-73; and pp. 541-558, respectively.

After due consideration, the Court finds petitioner's Motion for Reconsideration bereft of merit.

At the outset, petitioner's argument that the appeal to the FDDA was actually a request for *reconsideration* but was only mislabeled by a non-lawyer as a request for reinvestigation appears to be a *mere afterthought*. Petitioner did not raise this argument in its *Petition for Review* or *Memorandum*, and was only raised for the first time in the instant *Motion for Reconsideration*.

Nevertheless, the Court reiterates that jurisprudence has consistently held that jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. xxx [I]t is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[3]

Relevantly, a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same can no longer be contested,[4] thus depriving the Court of its jurisdiction to resolve the merits of the case.

In *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and Citysuper, Incorporated*,[5] the Supreme Court had the opportunity to further elucidate that when a taxpayer files a Petition for Review before the Court of Tax Appeals (CTA) without **validly** contesting the assessment with the CIR, the appeal is premature and the CTA has no jurisdiction, thus:

> "Section 228 of the National Internal Revenue Code is clear. **The administrative protest must be filed not only within the stated period, but also <u>'in such form and manner as may be prescribed by implementing rules and regulations</u>.'** [*Citysuper, Inc.'s*] April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.
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> x x x
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> **Here, however, [*Citysuper, Inc.'s*] protest was void for failing to comply with the requirements of Revenue Regulations No. 18-2013, as mandated by Section 228 of the National Internal Revenue Code.** [*Citysuper, Inc.'s*] erred in claiming that the July 13, 2015 letter was [*CIR's*] 'final decision' on its protest, there being no valid protest to speak of. Notably, the July 13, 2015 letter did not discuss the merits of any communication sent by

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3 *Bernadette S. Bilag, et al. v. Estela Ay-ay, et al.,* G.R. No. 189950, April 24, 2017.
4 *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.,* G.R. No. 148380, December 9, 2005.
5 G.R. No. 239464, May 10, 2021.

> [*Citysuper, Inc.*] after its April 29, 2015 letter, but merely stated that no valid protest was filed.
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> x x x
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> **Section 228 of the National Internal Revenue Code requires that administrative protests against assessments conform to the rules and regulations issued by the Bureau of Internal Revenue.** [*Citysuper, Inc.'s*] April 29, 2015 letter did not comply with the requirements set down in Revenue Regulations No. 18-2013. **There was no administrative protest to speak of, and no decision on a disputed assessment to assail. Thus, the Court of Tax Appeals had no jurisdiction over the Petition for Review assailing the July 13, 2015 letter.**" *(Emphases added)*

Analogous to this holding, the form and manner of appeal to be filed by a taxpayer to the CIR has been clearly and distinctively defined in Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, particularly, the taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.* Moreover, the Section clearly defined the two types of written protests which the taxpayer may resort to, to wit:

> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

Thus, the two types of protest, *i.e.*, request for reconsideration and reconsideration, can no longer be used interchangeably and their differences so lightly brushed aside.[6]

Here, the Court finds it hard to agree that petitioner's request for reinvestigation was merely mislabeled as such. As already discussed in the Court's Decision, the supposed *Appeal Letter* dated March 9, 2018 filed to the CIR categorically states that the same is a <u>request for reinvestigation with reservation on the submission of additional arguments and documents</u> to support its position. Hence, the clear intention of petitioner was to file a request for reinvestigation to the CIR.

[6] See *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

Further, even assuming that the Court were to ignore the requirement, the appeal letter still failed to state the issues to be resolved or the particular matter it disputes over the findings of the CIR, as the same simply made reference to the FDDA dated February 1, 2018 and then appended its previously filed protest to the FAN. As there was no valid administrative protest to the CIR to speak of, the FDDA dated February 1, 2018 had become final, executory and demandable. Consequently, the Court *no longer has jurisdiction* to rule on the validity and correctness of the deficiency tax assessments.

It bears emphasis that although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.[7]

As to petitioner's argument that the computations in the FDDA and assessment notices were erroneous as found by the ICPA, it is worth stressing that the Court was already precluded from ruling on the validity of the assessments, the same being final and unappealable. Simply put, being final and executory, the taxpayer may no longer raise defenses which go into the merits of the assessment.

Apropos, in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[8] the Supreme Court discussed the implications of a valid assessment. The High Court held that the CTA correctly dismissed Bank of the Philippine Islands (BPI)'s appeal for lack of jurisdiction regarding a final and unappealable assessment and that BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits.

Again, well-settled is the rule that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without binding legal effect.[9] Thus, the Court need not belabor on the other issues advanced by petitioner.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court finds no compelling reason to reverse or modify the Decision promulgated on June 25, 2024.

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[7] *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, June 11, 2012

[8] G.R. No. 134062, April 17, 2007.

[9] Supra Note 3.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration [Re: Decision dated 25 June 2024]* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(Inhibited)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice