REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BLOAT AND OGLE, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8682

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:
DEC 16 2016
11:02 a.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's Motion for Reconsideration filed on October 5, 2016; with petitioner's Opposition To Respondent's Motion for Reconsideration ("Opposition") filed on October 20, 2016.

On September 2, 2016, the Court promulgated a Decision[1], the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** The Formal Letter of Demand No. 043A-B190-07 dated December 28, 2010, as well as Assessment Notices for deficiency income tax, value added tax, expanded withholding tax, improperly accumulated earnings tax, along with compromise penalties and surcharges, amounting to Php676,668.43 for taxable year 2007, are hereby **CANCELLED** and **WITHDRAWN.**
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> **SO ORDERED.**

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[1] *Records, Vol. 2, CTA Case No. 8682,* pp. 649-667.
[2] *Id.,* pp. 891-892.

In his Motion for Reconsideration, respondent alleges that the subject assessments have become final, executory and demandable due to petitioner's failure to file the Petition for Review ("PFR") within thirty (30) days after the lapse of the one hundred eighty (180) days period provided under *Section 228 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*, which should be counted from March 29, 2011, the date when petitioner submitted the documents in support of its protest.

Respondent maintains that the letter dated June 19, 2013 signed by the Chief of the Collection Division is not the Final Decision on Disputed Assessment ("FDDA"), but rather, it is just a communication informing petitioner of the authority of Revenue Officer Remedios May Roque ("RO Roque") of the Arrears Management Team to proceed with the collection of outstanding deficiency taxes through summary remedies; that the demand to pay in the second paragraph of the letter is but a courtesy to give the taxpayer the last opportunity to settle their tax obligations voluntarily; that it cannot be considered as the FDDA since it did not make any reference to the protest filed by petitioner.

Respondent posits that the requirement of due process was properly observed; that petitioner was fully apprised of the facts and the law on which the final assessment was issued; that the final assessment, demand letter and details of discrepancies were all sent together to petitioner. Thus, respondent seeks for reconsideration and prays for the Court to set aside its Decision dated September 2, 2016 and order petitioner to pay the deficiency tax assessments plus 25% surcharge and 20% annual interest for the late payment.

In its Opposition, petitioner counter-argues that the Motion for Reconsideration is *pro-forma* as it did not raise new arguments for discussion. Petitioner asseverates that it submitted the documents in support of its administrative protest and these were received by Ms. Nelia A. Delos Reyes from BIR Revenue Region No. 7; that its witness attested to this fact and respondent did not objected to this testimony, neither did he cross-examine the witness in order to refute the claim.

Petitioner asserts that the Court has jurisdiction over the instant case; that it timely filed the Petition for Review; that the letter dated

June 19, 2013 is the FDDA based on the tenor of the letter, which demands for the payment, with a warning that should it fail to settle its liabilities, respondent will enforce collection through administrative remedies without further notice; and that it was denied due process by its non-receipt of the preliminary assessment notice ("PAN").

After a careful review of the grounds raised in the Motion for Reconsideration and the corresponding Opposition thereto, the Court finds no new matters or arguments which were not considered in the Assailed Decision. Respondent failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Consequently, the Court finds respondent's Motion for Reconsideration devoid of merit. Nevertheless, the Court will expound on the issues raised, if only to reinforce the discussion in the Assailed Decision.

Section 228 of the 1997 NIRC is instructive of the procedure to be followed in assessments, to wit:

> Section 228. **Protesting an 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 pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> 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. xxx xxx xxx[3]

[3] Underscoring ours.

Likewise, *RR No. 12-99*[4] provides that:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
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> > 3.1 Mode of procedures in the issuance of a deficiency tax assessment: xxxxx
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> > > 3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. xxxxx

It is of no moment that petitioner was given ample opportunity to present evidence during the audit. The law clearly state that the taxpayer should be given the PAN before a final assessment is issued. The fact remains, that the undated PAN was addressed to petitioner's old registered address and respondent did not provide proof to support his claim that the PAN was received by petitioner. Jurisprudence is replete with cases holding that if the taxpayer denies

[4] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999, signed by Secretary of Finance Edgardo B. Espiritu

ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the petitioner received the assessment in the due course of mail.[5]

In addition, the Supreme Court has already ruled that failure to strictly comply with the notice requirements prescribed under *Section 228 of the 1997 NIRC* and *RR No. 12-99*, is a denial of due process rendering the assessment issued as void. In the case of *CIR vs. Metro Star Superama, Inc.*,[6] the Supreme Court held:

> xxx xxx xxx
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> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must first be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.
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> xxx xxx xxx
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> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *shall* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star*[s]* right to due process. Thus, for its failure to send the PAN stating the facts and the law on which

[5] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 150764, August 7, 2006, 498 SCRA 126.
[6] G.R. No. 185371, December 28, 2010, 637 SCRA 633

the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.

xxx xxx xxx

Tax laws are civil in nature. Under our Civil Code, acts executed against the mandatory provisions of law are void, except when the law itself authorizes the validity of those acts. Failure to comply with *Section 228 of the 1997 NIRC* does not only render the assessment void, but also finds no validation in any provision in the NIRC.[7]

Among the ends to which a motion for reconsideration is addressed, is to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence.[8] Thus, having failed to convince the court, the motion must necessarily fail.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated September 2, 2016 is **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[7] *Commissioner of Internal Revenue vs. Azucena T. Reyes,* G.R. No. 159694; *Azucena T. Reyes vs. Commissioner of Internal Revenue,* G.R. No. 163581, January 27, 2006, 382 SCRA 480.
[8] *Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur,* 32 SCRA 314, 317 (1970).