REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ALAN U. CHAN,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10034

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
AUG 15 2024
3:40 pm

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RESOLUTION

CUI-DAVID, J.:

Before this Court is respondent's ***Motion for Reconsideration (Re: Decision promulgated on 9 January 2024)*** filed on February 2, 2024, with petitioner's ***Comment/Opposition (to Respondent's Motion for Reconsideration)*** filed on February 29, 2024.

Respondent's *Motion for Reconsideration (Motion)* assails the Court's *Decision* dated January 9, 2024, with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent's Formal Letter of Demand dated November 17, 2015, and the Warrant of Distraint and/or Levy dated December 17, 2018, covering taxable year 2011 for the alleged deficiency IT, VAT, EWT, and compromise penalties, including interests and surcharges, are **CANCELLED** and **SET ASIDE**.
>
> Further, respondent is **ENJOINED** from proceeding with the collection of taxes in the above-captioned case.
>
> **SO ORDERED**.

Respondent argues that the assessment has become final, executory, and demandable due to petitioner's failure to file a protest within thirty (30) days from receipt of the Formal Letter of Demand (**FLD**) and by not filing a *Petition for Review* before the Court within thirty (30) days from the lapse of the 180-day period for the Revenue District Office (**RDO**) to decide; that the filing of a request to resolve does not toll the prescriptive period; and that "petitioner slept on his rights and only decided to file the instant case after receiving the latest letter informing him that summary remedies will be taken" against him.

Respondent also argues that his right to assess and collect has not yet prescribed; that petitioner executed a valid waiver, and he is estopped from assailing its validity for not raising it as an issue in his protest to both the Preliminary Assessment Notice (**PAN**) and the FLD; that there was no violation of petitioner's right to due process, considering that "petitioner was apprised of and was able to avail of the remedies provided by law to refute the tax assessment against it [sic] when it [sic] filed the protest to the PAN and FLD;" that the Court erred in enjoining him from collecting the assessed deficiency taxes; and that assessments are presumed correct and made in good faith, petitioner did not show a "clear legal right" to injunction, and there is no urgent and paramount necessity for a suspension order to be issued to prevent any grave and irreparable damage upon the petitioner.

In his *Comment*, petitioner argues that respondent's *Motion for Reconsideration* is "essentially a reiteration and rehashing of previously discussed issues and arguments;" that the Court correctly ruled that the *Petition* was timely filed within 30 days from his receipt of the letter dated October 12, 2017, as he awaited the final decision of respondent; and that respondent's right to assess and collect has already prescribed, contending that RMC No. 141-2019 is not yet effective at the time involved in this case and that the said RMC "cannot supersede established Supreme Court jurisprudence.

Petitioner also states that the Court correctly observed the "lack of evidence provided by respondent to refute [his] claims regarding the [improper] service of the FAN/FLD;" and that the impropriety of the service of the FLD may be raised at any stage, even on appeal.

Arguing against the validity of the PAN, petitioner also states that such is void "for failure to state the legal and factual basis thereof;" and that the Court should enjoin respondent from collecting the assessed deficiency taxes.

We find respondent's *Motion for Reconsideration* bereft of merit.

First, respondent fails to convince this Court that the assessment has become final and executory and that the Court has no jurisdiction to entertain the instant *Petition*. This argument has been thoroughly addressed in the assailed *Decision, viz.*:

> In determining the timeliness of an appeal from the inaction of the CIR, a plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-1999, as amended, reveals that there is only **one (1) "180-day period" of inaction** to speak of which shall be counted from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and not from the date when the decision of the CIR's authorized representative was appealed to the CIR.
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> ...
>
> Under the circumstances, the Court finds that petitioner chose to "await the final decision" of the CIR's duly authorized representative on his protest pursuant to Section 3.1.4 of RR No. 12-1999, as amended, which implements Section 228 of the NIRC of 1997, as amended. Section 3.1.4 states that petitioner may either:
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> (i) **appeal to the CTA** within thirty (30) days after the expiration of the one hundred eighty (180)-day period; ***or***
> (ii) **await the final decision of the Commissioner's duly authorized representative** on the disputed assessment.
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> It bears to note that "awaiting the final decision" is an *alternative course of action* available to the taxpayer, like petitioner, in case there is inaction on the *protest* by the CIR's duly authorized representative within the prescribed 180-day period.
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> Subsequently, RDO 103 issued a letter dated October 12, 2017, informing petitioner that his tax case has become final and executory with the issuance of the FLD. Petitioner treated the letter he received on October 23, 2017, as a denial

> of his protest. Following this, petitioner elevated his protest to the Office of the Commissioner on November 8, 2017, within 30 days from receipt of the denial letter, also pursuant to Section 3.1.4 as previously quoted.
>
> Notwithstanding the pendency of the administrative appeal, a WDL dated December 17, 2018, was served by the BIR to petitioner on January 9, 2019. Upon receipt of the WDL, petitioner filed a *Letter* dated January 10, 2019, addressed to RD Furia, invoking that the WDL was prematurely issued given the pendency of his Appeal with the Office of the Commissioner and requesting the RD to recall the WDL since the assessment has not become final and executory.
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> In response, petitioner received on February 6, 2019 a *Letter* dated February 4, 2019, signed by RD Furia, stating that the assessment had become final and executory and that the subject WDL is valid and legal.
>
> On February 26, 2019, within 30 days from receipt of the said *Letter*, petitioner filed the instant *Petition for Review*.
>
> We find that petitioner properly reckoned the 30 days to appeal to the CTA from his receipt of the said *Letter* on February 6, 2019. [*Citations omitted.*]

As ruled, the "disputed assessment" in this case "cannot yet be considered final, executory, and demandable" because the denial of petitioner's protest was *timely* elevated to respondent on November 8, 2017. Also, the 30-day period to appeal to this Court cannot be counted from petitioner's receipt of the Warrant of Distraint and Levy (WDL) on January 9, 2019, given the pendency of petitioner's appeal with the Office of the Commissioner of Internal Revenue when it was issued. The WDL emanated from a "non-demandable assessment"[1] because the disputed assessment is not yet final; hence, it is void and of no force and effect.[2]

Secondly, it is clear from the facts of the instant case that prescription had already set in.

Records do not indicate that respondent invoked the ten-year prescriptive period. Moreover, no valid waiver of the defense of prescription had been executed. While a *Waiver of the Defense of Prescription under the Statute of Limitations (Waiver)* had been formally offered and admitted as part of respondent's

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[1] *Light Rail Transit Authority v. Bureau of Internal Revenue*, G.R. No. 231238, June 20, 2022.
[2] *Id.*

evidence,[3] the same is defective and ineffectual because (1) it did not indicate the date of acceptance by the BIR and (2) there is no proof that petitioner was furnished a copy thereof. Records further show that petitioner testified on February 17, 2021, that he did not receive any waiver and could not remember if he signed a waiver. Respondent left this testimony unrebutted, considering that his witness, RO Deligero, merely identified the waiver. The Court also found no testimony from any of respondent's witnesses as to the BIR's acceptance of the waiver, nor did he refute petitioner's testimony as to the execution and his non-receipt of the waiver.

The BIR's acceptance of the *Waiver* and petitioner's receipt of a copy of the duly accepted *Waiver* are essential to its validity, as provided under RMO No. 20-1990[4] and Revenue Delegation Authority Order (RDAO) No. 05-01.[5]

Accordingly, We affirm our ruling that the subject *Waiver* did not extend the original 3-year prescriptive period to assess petitioner for taxable year 2011.

Respondent likewise fails to convince the Court that his right to collect petitioner's alleged deficiency taxes had not prescribed. Assuming the BIR validly issued the assessment within the prescribed 3-year period, it has another three years to collect the tax due by *distraint, levy, or court proceeding.* The 3-year prescriptive period, counted from November 17, 2015, would lapse on November 17, 2018. Thus, when petitioner received the WDL dated December 17, 2018 on January 9, 2019, respondent's right to collect petitioner's deficiency taxes for TY 2011 had long prescribed.

Finally, the Court finds no merit to respondent's protestation that there was no violation of petitioner's right to due process. To reiterate, respondent failed to comply with the modes of service prescribed under Section 3.1.6, RR No. 18-2013,[6] amending RR No. 12-1999.[7] As previously ruled, there was no showing that respondent served petitioner the FAN/FLD through personal service, substituted service, or registered

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[3] Exhibits "R-49"and "R-12", Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, BIR Records, pp. 710 and 447, respectively.
[4] Proper Execution of Waiver of Statute of Limitations Under the NIRC, April 4, 1990.
[5] Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations, August 2, 2001.
[6] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.
[7] 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, September 6, 1999.

mail. Even a second review of the BIR Records[8] failed to indicate that the FLD and FANs were served on petitioner. Likewise absent are the required "accomplishment at the bottom portion of the assessment notice" and the "written report under oath setting forth the manner, place, and date of service," among other details required under RR No. 18-2013.

At the risk of repetition, it bears emphasizing that petitioner's filing of a *Protest* to the FLD does not denigrate the fact that statutory and procedural due process was denied.[9] It is a settled rule that tax assessments issued in violation of the taxpayer's right to due process are null and void and bear no fruit.[10]

With this, the Court finds no compelling reason to reverse or modify its *Decision* dated January 9, 2024.

WHEREFORE, in light of the foregoing, respondent's *Motion for Reconsideration (Re: Decision promulgated on 9 January 2024)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[8] Exhibit "R-24", BIR Records, pp. 566-578.
[9] *CIR v. Next Mobile, Inc.*, G.R. No. 232055 (Notice), April 27, 2022; *Pilipinas Shell Petroleum Corporation v. CIR*, G.R. No. 172598, December 21, 2007, cited in *CIR v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.
[10] *Id.*