REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

KILUSANG MAGKAIBIGAN MULTI-PURPOSE COOPERATIVE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8751

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 19 2017
10:30 a.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, J.:

For resolution is respondent's **Motion for Reconsideration**, filed on December 6, 2016, with petitioner's **Opposition (To Respondent's Motion for Reconsideration dated December 6, 2016)**, filed through registered mail on December 29, 2016 which the Court received on January 11, 2017.

Respondent assails the Court's Decision dated November 17, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Preliminary Collection Letter dated November 20, 2013, and the Formal Letter of Demand and Final Assessment Notices dated November 21, 2011 are **CANCELLED** and **SET ASIDE**."

In assailing the said Decision, respondent anchors its arguments on the following grounds:

I. The assessment was issued pursuant to a *prima facie* finding of fraud under Sections 248 (B) and 222 of the 1997 National Internal Revenue Code, as amended; and

II. The assessment has already attained finality, by operation of law.

Respondent contends that there was substantial under-declaration which was apparent during the initial findings of petitioner's tax liabilities. Respondent claims that a preliminary investigation was conducted and a formal fraud investigation was recommended. As such, there is allegedly a *prima facie* finding of fraud against petitioner. Thus, the ten 10-year prescriptive period shall apply in this case.

Further, respondent asserts that for failure of petitioner to protest the Final Assessment Notice (FAN) within the thirty 30-day period provided in the Tax Code, the assessment has attained finality by the mere lapse of time and is no longer open to dispute and discussion.

On the other hand, petitioner counter-argues that respondent's claim that there is *prima facie* finding of fraud is a mere rehash and that the said allegations were duly passed upon and correctly rejected by this Court in the assailed Decision. Petitioner also asserts that it has continuously invoked its tax-exempt status as a cooperative in its response to the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN).

After a careful evaluation of the foregoing, the Court finds the same as mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

Contrary to respondent's allegation that there is a *prima facie* finding of fraud in this case, the Court already found that petitioner has no underdeclared income based on the evidence presented by both parties. Therefore, the Court cannot sustain respondent's allegation that the ten (10)-year prescriptive period applies in this case.

As to the issue on the failure to protest the FAN within the 30-day period provided by law, aside from the cases cited in the assailed Decision regarding the matter, the Court further finds significant the ruling of the Supreme Court in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[1], the pertinent portion of which reads:

> "The first assigned error relates to the jurisdiction of the CTA over the issues in this case. The Court of Appeals ruled that only decisions of the BIR denying a request for reconsideration or reinvestigation may be appealed to the CTA. Since the petitioner did not file a request for reinvestigation or reconsideration within thirty (30) days, the assessment notices became final and unappealable. The petitioner now argue that the case was brought to the CTA because the warrant of distraint or levy was illegally issued and that no assessment was issued because it was based on an invalid waiver of the statutes of limitations.
>
> We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:
>
>> 'SEC. 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or *other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue*; (Emphasis supplied)."

[1] G.R. No. 162852, December 16, 2004.

> 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."

Based on the above-cited case, the Court of Tax Appeals has jurisdiction to determine if the warrant of distraint and levy issued by the Bureau of Internal Revenue (BIR) is valid and to rule if the Waiver of Statute of Limitations was validly effected because the same falls under "other matters that arise out of the NIRC", even if the petitioner therein did not file a request for reinvestigation or reconsideration within thirty (30) days as provided by law.

Notably, the issue on the validity of the waiver in the above-quoted jurisprudence ultimately relates to the issue on the prescription of BIR's right to assess.

Considering the foregoing, the Court finds that the question on the validity of the Preliminary Collection Letter, and the Formal Letter of Demand and FAN on the ground of prescription of respondent's right to assess in this case, also fall under other cases that arise out of the NIRC or related laws administered by the BIR pursuant to Section 7(1) of Republic Act No. 1125, as amended. Thus, regardless of whether or not petitioner timely filed the protest to the FAN, the Court can acquire jurisdiction on the issue of prescription of the period to assess and on the validity of the Preliminary Collection Letter.

Since no new arguments were raised by respondent in the motion, the Court finds no cogent reason to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice