CTA Form No. 8 (For DCC)

18-000258-0077

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9850

BARRIO FIESTA MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. AYLEEN B. ALMIRA
Bureau of Internal Revenue-Revenue Region No. 5
Legal Division, 9th Floor, BIR Executive Building
No. 140 Bo. Kalaanan, Brgy. 86
M. Concepcion St., Caloocan City

DU-BALADAD & ASSOCIATES
20th Floor, Chatham House
Rufino cor. Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **November 7, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 8, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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BARRIO FIESTA MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9850

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

NOV 07 2024; 2:30PM

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RESOLUTION

REYES-FAJARDO, *J.*:

For action is petitioner's *Motion for Reconsideration (Re: Decision dated February 20, 2024)*[1] filed on March 15, 2024, with respondent's *Comment/Opposition (on Petitioner's Motion for Reconsideration to this Honorable Court's February 20, 2024 Decision)*[2] filed on May 7, 2024.

Under Decision dated February 20, 2024[3] (the "assailed Decision"), CTA Case No. 9850 was disposed as follows:[4]

> "**WHEREFORE,** we **RESOLVE** to:
>
> a. **DENY** the Petition for Review dated June 6, 2018, filed by Barrio Fiesta Manufacturing Corporation, for lack of merit;
>
> b. **ORDER** petitioner to **PAY** the total amount of **NINE MILLION FIVE HUNDRED NINETY-THREE THOUSAND FIVE**

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1 Motion for Reconsideration, Docket, Vol. II, pp. 957 - 981.
2 Comment/Opposition, Docket, Vol. II, pp. 984 - 991.
3 Decision, Docket, Vol. II, pp. 937 - 952.
4 *Id.* at pp. 950 - 951.

HUNDRED SIXTY-EIGHT PESOS AND TWENTY-NINE CENTAVOS (₱9,593,568.29), inclusive of the surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018, computed as follows:

Basic Deficiency VAT	₱ 6,166,075.17
25% Surcharge	1,541,518.79
20% Deficiency Interest from 07/26/2016 to 12/31/2017	
[₱6,166,075.17 x 20% x 524/365 days]	1,770,423.77
12% Deficiency Interest from 01/01/2018 to 02/26/2018	
[₱6,166,075.17 x 12% x 57/365 days]	115,550.56
Total Amount Due as of February 26, 2018	₱ 9,593,568.29

c. **ORDER** petitioner to **PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the ₱9,593,568.29 total amount due as of February 26, 2018, or an amount equivalent to ₱3,154.05 per day, from February 26, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018; and,

d. **UPHOLD** the Final Notice Before Seizure assailed by petitioner in this case.

SO ORDERED."

In its *Motion for Reconsideration*,[5] petitioner argues: a) a void assessment can never be final and executory, as held in *Commissioner of Internal Revenue v. Metro Star Superama, Inc. ("Metro Star")*;[6] b) the assessments in question were void for respondent's violation of petitioner's right to due process by not complying with the "duty to give reason"; c) the Formal Letter of Demand/Final Assessment Notices (FLD/FAN) is void for being issued and signed by an officer without proper authority; d) petitioner is not liable for the alleged deficiency value-added tax (VAT) and compromise penalty for the 1st and 2nd quarters of 2016 arising from supposed undeclared sales per third party information; and e) the Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) issued against petitioner are void.

5 Motion for Reconsideration, Docket, Vol. II, pp. 957 - 981.
6 G.R. No. 185371, December 8 2010.

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On the other hand, respondent, in his *Comment/Opposition*,[7] retorts that: a) the final assessment has become final, executory and demandable, there being no protest filed by the petitioner; b) petitioner was timely assessed following the prescribed audit procedure; and c) petitioner was afforded due process in the issuance of a deficiency tax assessment pursuant to Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013.

The Motion lacks merit.

First. We note that all the grounds advanced by petitioner in its Motion are centered around the supposed nullity of the final assessment. Before such grounds may even be reviewed by the Court, petitioner should have *first* disputed the FLD/FAN, and appeal the decision or inaction thereon by respondent or his duly authorized representative. As discussed in page 14 of the assailed Decision, petitioner failed to validly lodge an administrative protest on the FLD/FAN, despite receipt thereof; precisely, the assessed taxes found therein was conclusive upon petitioner.

Second. *Metro Star* is inapplicable here. True, in said case, the Supreme Court ruled that it need not discuss the matter of whether therein taxpayer registered an administrative protest because a void assessment bears no valid fruit. Such conclusion was grounded on the violation of therein taxpayer's right to due process for the BIR's failure to prove that said taxpayer actually received the Preliminary Assessment Notice (PAN).

Contrasted from *Metro Star,* petitioner's receipt of the PAN was not at issue in this case. In fact, petitioner: (1) admitted that it received the PAN, served by the BIR;[8] and (2) it filed a Reply thereon.[9] On these accounts, due process has been observed in the issuance of the PAN with respect to petitioner.

Finally. Had petitioner registered a valid administrative protest on the BIR's FLD/FAN, the former could have properly ventilated its points why such final assessment is null, and eventually, we could have possibly reviewed the soundness of those points. Petitioner did

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[7] Comment/Opposition, Docket, Vol. II, pp. 984 - 991.
[8] Decision, Docket, Vol. II, p. 938.
[9] *Id.*

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no such thing. Therefore, the only one to blame for such predicament is petitioner itself.

WHEREFORE, petitioner's Motion for Reconsideration (Re: Decision dated February 20, 2024) is **DENIED,** for lack of merit. The Decision dated February 20, 2024 is **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice