REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MANUEL B. PALAGANAS doing business under the name and style STEMIKO COMMERCIAL,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8394

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
NOV 14 2014
1:15 p.m.

x- x

RESOLUTION

COTANGCO-MANALASTAS, *J.:*

For resolution is respondents' *Motion for Reconsideration (of the Decision dated 17 September 2014)* filed on October 3, 2014 through registered mail and received by this Court on October 15, 2014. Respondent seeks reconsideration of this Court's Decision, promulgated on September 17, 2014, the dispositive portion of which reads:

> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated July 29, 2009, the amended Preliminary Assessment Notice dated January 18, 2010, and the Final Assessment Notice dated January 28, 2010 are **CANCELLED** and **SET ASIDE** for being void. The Warrant of Distraint and/or Levy dated November 18, 2010 and the Notices of Tax Lien dated November 30, 2010 addressed to the Registry of Deeds and the City Assessor of Muntinlupa City are likewise **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

Respondents' motion is based on the following grounds:

a. Petitioner's right to due process of law was not violated when the assessment notices were issued; the Preliminary Assessment Notice (PAN) dated July 29, 2009 was served to petitioner's employee, Roselyn Olaera, the person who was present at the office of petitioner, the person to whom Ms. Rebecca Mallorca inquired whether she is an employee of petitioner and the person who confirmed that she is indeed an employee of petitioner; while the Amended PAN and Final Assessment Notice (FAN), both sent through registered mail, were received by petitioner as evidenced by Registry Return Receipts (Exhibits "12" and "14") issued by the Philippine Postal Corporation; the Amended PAN and FAN sent via registered mail were properly addressed to petitioner with postage prepaid and the registry return receipts will show that it was mailed and directed to petitioner;

b. Petitioner's failure to file protest against the FAN renders the assessment final, executory and demandable; the FAN was sent and received by petitioner on April 21, 2010, however, despite receipt, petitioner failed to file his letter of protest within 30 days; and

c. Petitioner should have filed the petition for review within 30 days from receipt of the Preliminary Collection Letter (PCL) hence, this Court has no jurisdiction over the case; petitioner should not have waited for the 180-day period; the inaction within the 180-day period is applicable on the "protest" on the assessment notice and not on the collection letter; the PCL and Warrant of Distraint and Levy are considered as respondent's "final decision".

In his *Comment To Respondent's Motion for Reconsideration to the Decision of this Honorable Court dated 17 September 2014*, petitioner states that respondent's motion for reconsideration is a mere rehash of its position which respondent already laid down in her various pleadings filed with the Court.

Petitioner contends that first, respondent failed to establish proper service of assessment notices to petitioner or his duly authorized representative. Second, respondent's argument that the assessment has become final, executory and demandable lacks factual and legal bases. Since there was no service of notices to petitioner, the effect is, as if no assessment was ever made, hence, respondent's right to assess had long been prescribed. Third, the PCL shall serve as the assessment notice if it was the initial notice received by the taxpayer regarding his internal revenue tax liabilities and if it can be proven that the taxpayer did not receive any assessment notice and no follow-up letter was sent or no preliminary conference was arranged.

A perusal of respondent's motion shows that the arguments raised therein are mere reiteration of her previous arguments which had been fully addressed and discussed at length by the Court in the assailed Decision.

Anent respondent's argument that this Court has no jurisdiction over the instant case since petitioner should have filed the petition for review within 30 days from receipt of the PCL, *We* are not convinced.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that the taxpayer has 30 days from receipt of the FAN within which to file an administrative protest and a period of 30 days from receipt of the adverse decision of the Commissioner of Internal Revenue (CIR) or lapse of the 180-day period, in case of inaction, within which to appeal to the Court of Tax Appeals (CTA).

In the instant case, it was established that the PAN was not properly served on petitioner while respondent failed to prove that the Amended PAN and FAN were validly sent to and actually received by petitioner, thus making the assessment void and a void assessment bears no valid fruit[1]. Since petitioner did not receive the FAN, the 30-day period within which to file an administrative protest cannot even commence. Consequently, the running of the 30-day period to appeal to the CTA from the decision or inaction of the CIR cannot likewise commence considering that the protest is not yet due for filing, thus no disputed assessment to decide on.

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[1] *Commissioner of Internal Revenue v. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006.

Inasmuch as the respondent failed to prove that the assessment notices were actually received by petitioner, petitioner cannot be faulted for treating the PCL as the FAN since the PCL was the initial notice received by petitioner regarding his alleged tax liabilities for taxable year 2006. Moreover, there are CTA cases[2] holding that the PCL may be considered as the final assessment notice itself if the taxpayer did not receive any assessment notice and the PCL is the initial notice received by the taxpayer regarding his deficiency tax assessment.

In this case, the PCL was received by the petitioner sometime in May 2011 and on May 25, 2011, petitioner filed his protest thereto. Hence, petitioner, treating the PCL as the FAN, filed a protest within the 30-day period provided in Section 228 of the NIRC of 1997, as amended. Respondent did not issue any decision on petitioner's protest. Thus, respondent having failed to act on the protest within the 180-day period provided in Section 228 of the NIRC of 1997, as amended, the instant petition for review was timely filed on December 14, 2011.

In view of the foregoing, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[2] *United International Pictures AB vs. CIR*, CTA Case No. 5884, June 5, 2002; *Cebu Mabuhay Pawnshop, Inc. vs. CIR*, CTA Case No. 6266, March 25, 2004; *LG Collins Electronics Philippines, Inc. vs. CIR*, CTA Case No. 6186, June 9, 2004.