REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TOYOTA MANILA BAY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8227

Members:

DEL ROSARIO, P.J.,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

FEB 17 2015 ; 1:18 p.m.

x - x

RESOLUTION

UY, J.:

For resolution are the following:

1) petitioner's **"MOTION FOR RECONSIDERATION"** filed on October 1, 2014, without respondent's comment/opposition despite due notice; and

2) respondent's **"MOTION FOR PARTIAL RECONSIDERATION"** filed on October 1, 2014, with petitioner's **"COMMENT/ OPPOSITION (To Respondent's Motion for Partial Reconsideration)"** filed on November 6, 2014.

Both motions seek a reconsideration and the setting aside of this Court's Decision dated September 3, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, all the foregoing considered, the Petition for Review is **PARTIALLY GRANTED**. The Formal Assessment Notice dated October 24, 2007 and

the Warrant of Distraint and Levy No. 2011-001 dated January 6, 2011, issued by respondent against petitioner, are hereby **MODIFIED**, so as to reflect only the basic deficiency VAT assessment amounting to ₱ 666,685.90, and basic deficiency DST assessment in the amount of ₱ 735,000.00, plus surcharges and interests.

Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the total amount of ₱ 1,752,107.33, inclusive of surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Value-added Tax	₱ 666,685.90	₱ 166,671.48	₱ 833,357.38
Documentary Stamp Tax	735,000.00	183,750.00	918,750.00
Total	₱ 1,401,685.90	₱ 350,421.48	₱ 1,752,107.33

In addition, petitioner is liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱ 666,685.90 and basic deficiency DST of ₱ 735,000.00, computed from January 25, 2005 and January 5, 2005, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱ 1,401,685.90, computed from November 24, 2007 until full payment thereof, pursuant to Section 249(C) of the same Code.

SO ORDERED."

In the motion of petitioner, the latter raises the following grounds in support thereof, to wit:

1) The Final Assessment Notice (FAN) does not constitute a definite and unequivocal demand for payment within a certain date, a violation of petitioner's right to due process.

2) The FAN failed to state a law or a correct law or jurisprudence and factual basis upon which the assessment is based.

3) The Summary List of Sales of Suppliers is not supported by Sworn Statements.

4) Petitioner made advanced payments that should have reduced its alleged tax liability.

On the other hand, respondent, in her motion, raises the following grounds, to wit:

1) Petitioner's letter-response dated November 23, 2007 to the FAN does not constitute a valid protest because it does not in any way dispute the assessments by stating the facts, the applicable laws, rules and regulations or jurisprudence as provided for under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 3.1.5 of Revenue Regulations No. (RR) 12-99.

2) Section 3.1.5 of RR 12-99 is one of the stipulated facts by the parties. Hence, petitioner cannot escape the binding effect of its judicial admission.

3) The 30-day period within which to file a valid protest is mandatory and non-extendible. There is nothing in the NIRC of 1997, as amended, or rules and regulations which gives the Regional Director the authority to extend the 30-day within which the taxpayer should protest the FAN.

4) Petitioner never contested the assessment. In fact in the course of audit investigation by the respondent, for several occasions, petitioner immediately made partial payments thereto. If petitioner believes that it is not liable to the subject deficiency tax assessment, then it should not have paid even a single centavo.

5) The subsequent proceedings that led to the opening/reinvestigation of the case after the assessment had already become final, executory and demandable, produced no legal effect, being contrary to law and jurisprudence.

THE COURT'S RULING

Both motions lack merit.

No violation of petitioner's right to due process as the subject assessments contain a definite and unequivocal demand for payment of the assessed taxes within a certain date.

As We have already shown and ruled in the assailed Decision, petitioner was informed of the facts and the law on which the subject assessments were made.

To reiterate, the Details of Discrepancies[1] show that the factual and legal bases for the subject assessments. The deficiency income tax assessment is anchored on the finding that there were *"undeclared disbursements"*, which was equated to *"undeclared income"*, and thus, such non-declaration results in an assessment based on Section 32 of the National Internal Revenue Code (NIRC), as amended, in relation to the alleged case of *Perez vs. CTA and CIR*. Anent the value-added tax assessment, the factual bases therefor are on the same *"undeclared income"* and the supposed non-inclusion of the *"Ancillary Income"* and *"Miscellaneous Income"*; while the legal bases therefor are Sections 105 and 106 of the NIRC, as amended. With regard to the documentary stamp tax assessment, the same is based on the fact that petitioner's Notes Payable was not subjected to DST, and on Section 180 (which is now Section 179) of the NIRC, as amended by Republic Act No. 9243.

Furthermore, the last paragraph of the FAN[2] contains a demand for the payment of the subject assessments in this wise:

> "In view thereof, it is requested that you pay the above deficiency taxes, through the duly authorized agent bank in which you are enrolled, within the time shown in the accompanying assessment notice."

In relation thereto, the said accompanying Assessment Notices[3] provided that the subject assessments are payable on or before November 24, 2007.

Thus, contrary to petitioner's stance, there is compliance with the requirements mandated by law for the issuance of the said assessments. Such being the case, there is no violation of petitioner's right to due process.

The law does not require that the facts and law to be stated in the assessment must be correct.

---

[1] Exhibit "H-1", Docket, pp. 363 to 364.
[2] Exhibit "H", Docket, pp. 361 to 362.
[3] BIR Records, pp. 201 to 204.

Section 228 of the NIRC of 1997 provides:

> "SEC. 228. *Protesting of 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: xxxx
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

A plain reading thereof would reveal that the statute is undeniably clear. Specifically, there is no indication that the law and fact upon which the assessment is made should be correct. To depart from the meaning expressed by the words is to alter the statute, is to legislate not to interpret.[4]

It is the rule in statutory construction that if the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and, where there is no ambiguity in the words, there is no room for construction. The courts may not speculate as to the probable intent of the legislature apart from the words. The reason for the rule is that the legislature must be presumed to know the meaning of words, to have used words advisedly and to have expressed its intent by the use of such words as are found in the statute.[5]

At any rate, as We have ruled in the assailed Decision, although the facts and the law upon which the assessment is made are stated in the FAN, this Court is not precluded from making a thorough determination of whether or not such facts and law are indeed free from error, as it in fact did therein.

The absence of Sworn Statements in the Summary List of Sales of Suppliers does not make the assessment void.

[4] *Tañada vs. Yulo, et al.*, G.R. No. 43575, May 31, 1935.
[5] *Aparri vs. Court of Appeals, et al.*, G.R. No. L-30057, January 31, 1984.

Petitioner points to Revenue Memorandum Order No. (RMO) 46-2004 and to the case of *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*[6], which was decided by this Court, in support of its argument that since the Summary List of Sales of Suppliers is not supported by Sworn Statements, the subject assessment is void.

We do not agree.

While in this case, there is no indication that there was indeed Sworn Statements that were obtained by the Bureau of Internal Revenue (BIR) in connection to the Third Party Information provided relative to the subject tax assessments, the latter may not be treated as void on such ground, there being no legal provision treating the same as such.

The pertinent provision of RMO 46-2004[7] reads:

"II. POLICIES AND GUIDELINES

xxx xxx xxx

4. In the event a taxpayer who has been issued an LN[8] protests the accuracy of the data provided by third party sources (as opposed to erroneous encoding of return information in the ITS), the RO concerned shall, upon receipt of the Protest Letter of the taxpayer, evaluate the protest and require the latter to execute a Sworn Statement attesting to the alleged inaccuracies or errors in the TPI. The TPI[9] provider (except BOC) shall also be required to execute a Sworn Statement attesting to the data provided.

   Enforcement action shall be undertaken in instances when, on the basis of the documents submitted by both the TPI providers and the taxpayer concerned, as well as other information

---

[6] CTA Case No. 7531, February 4, 2009.

[7] SUBJECT: Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

[8] Letter Notice.

[9] Third Party Information.

> *available to him / her, the Regional Director / Head of the Large Taxpayers Service has reason to believe that there is an evasion of taxes that warrants said action. The Regional Director / Head of the Large Taxpayers Service shall decide on the most appropriate enforcement action (such as audit / investigation, surveillance, stock-taking) that will expedite the recovery of the unpaid taxes.*
>
> *The above enforcement action shall be in addition to the filing of criminal charges as may be warranted by the Commissioner or the Office of the Deputy Commissioner for Criminal Prosecution. For this purpose, the documents obtained by the RO from the taxpayer and the TPI source(s), as well as the evaluation of the Regional Director / Head of the Large Taxpayers Service, must be forwarded to the Deputy Commissioner within one (1) month from completion of the evaluation.*"

However, nothing in this paragraph, nor in the other provisions of RMO 46-2004, does it state that the absence of the said Sworn Statements will have the effect of making the subject assessments void.

Moreover, the said case of *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue* cannot be treated as a binding precedent. In *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[10] the Supreme Court ruled:

> "xxx. **Suffice it to state that CTA decisions do not constitute as precedents**, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. **Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.** xxx." *(Emphases supplied)*

Thus, since there is no legal provision or basis stating that an assessment is void or shall be rendered void, simply because of the

[10] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

absence of Sworn Statements which supposedly have accompanied the Summary List of Sales of Suppliers, the subject tax assessments cannot be treated as such.

The taxes earlier paid by petitioner cannot be considered in the computation of its tax liabilities under the assailed Decision; nor can the same be treated as prejudicial to petitioner.

Petitioner is of the view that the *"advanced payments"* made by it should have reduced its alleged tax liability.

On the other hand, respondent points to these *"partial payments"* made by petitioner are indicative that it has never contested the assessment. Respondent then argues that had petitioner truly believed that it paid the right taxes and is not liable to the subject deficiency tax assessments for being invalid for lack of due process and were issued beyond the prescriptive period, then it should not have paid even a single centavo and instead asserted the lack of due process and prescription of its alleged protest letter dated November 27, 2007.

The respective contentions of the parties are untenable.

It is true that petitioner earlier remitted to respondent the total amount of ₱ 1,272,078.63, representing payment for basic deficiency taxes, interests and compromise penalties, relative to the audit of petitioner's internal revenue taxes for taxable year 2004 under Letter of Authority (LOA) No. 00045339 dated August 3, 2005. The said amount is broken down as follows:[11]

Tax Type/Description	**Amount (including interests and penalties)**
Non-filing of 1604-E	₱ 1,000.00 [12]
Non-filing of 1604-CF	1,000.00 [13]
Non-filing of quarterly purchases diskette	25,000.00 [14]
Non-filing of Inventory List	2,000.00 [15]
Withholding Tax on Compensation	77,386.14 [16]

[11] Par. 2, Supplemental Joint Stipulation of Facts (SJSF), Docket, p. 476.
[12] BIR Records, pp. 88 to 89.
[13] BIR Records, pp. 90 and 93.
[14] BIR Records, pp. 91 and 104.
[15] BIR Records, pp. 105 to 106.

Expanded Withholding Tax			89,881.16 [17]
Income Tax			111,730.40 [18]
VAT			992,790.93 [19]
	Total	**₱**	**1,272,078.63**

However, as borne out in the BIR Records, the bases of the foregoing amounts are not the same as that indicated in the said FAN. In the Memorandum dated January 16, 2006,[20] the following are stated:

"January 16, 2006

MEMORANDUM FOR:
The Revenue District Officer
Revenue Region No. 8
Revenue District No. 51
Pasay

RE: TOYOTA MANILA BAY CORP.
EDSA cor Roxas Blvd., Pasay City

This is a report on the original investigation for **all internal revenue taxes** of the above-named taxpayer covering the calendar year of 2004 pursuant to LA No. 45339 dated August 3, 2005.

Preliminary verification disclosed that the subject taxpayer is a corporation engaged in the car dealership business. The taxpayer's principal place of business is located at the above address.

This audit procedures adopted are clearly indicated in the audit program and upon completion of the audit the taxpayer was found to have kept and maintained the prescribed books of accounts and accounting records (General and subsidiary ledgers, cash receipts and disbursement books, general and special journals, sales invoices, official receipts, expense vouchers/receipts, etc.). Findings of the examination are taken up in the discussion that follows.

INCOME TAX

Annual income tax return (BIR Form # 1702) and quarterly income tax returns (1702Q) were filed on time. However, the taxpayer failed to give supporting documents for Miscellaneous Expense amounting to P241,215.69 and Communication Expense. These expenses were disallowed in accordance with Revenue Regulation V-1 as amended (The Bookkeeping Regulation) Chapter

---

[16] BIR Records, pp. 107 to 108.
[17] BIR Records, pp. 109 to 110.
[18] BIR Records, pp. 111 to 112.
[19] BIR Records, pp. 113 to 114.
[20] Exhibit "2", BIR Records, pp. 86 to 87.

IV, Section 14 (d) which states that 'Every purchase or expenditure by a taxpayer subject of these regulations shall be duly supported by receipt or invoice issued by the vendor or the person rendering the service in accordance with Section 15 of these regulations. Should any of these receipts or invoices lack any information required to be indicated therein, such receipts or invoices shall be deemed inadequate for documentation and substantiation of the particular transaction.'

These disallowed expense resulted to a deficiency income tax of P111,730.4 including increments. The taxpayer was also penalized P2,000 for non-filing of beginning and ending inventory list in accordance with section 250 of the NIRC.

WITHHOLDING TAX

Audit of the withholding taxes on compensation and income payments were found to have no discrepancy. The supporting documents and other related records were likewise examined and determined to be in accordance with the requirements of the law and revenue regulations. However the taxpayer filed their April 1601C and 1601E late which resulted to the corresponding penalties of P89,881.16 and P77,386.13. The taxpayer was also penalized P2000 fo failure to file 1604CF and 1604E.

Value Added Tax

Examination disclosed that they complied with the provision of the tax code by filing the quarterly and monthly value added tax returns (BIR Form No. 2550 & 2550A). All sales and purchases per VAT return reconciled with the accounting records of the taxpayer. However, input tax claimed in the amount of P822,100 were from non-vat source. This resulted to a deficiency vat of P992,790.93 including increments. The taxpayer was also penalized P25,000 for failure to file Diskette of quarterly purchases.

The total deficiency tax assessment was formally discussed and presented to subject taxpayer through their authorized representative. Upon conduct of actual evaluation and verification of noted discrepancies subject objected to some of the findings and accordingly manifested their willingness to pay the other assessment that they were agreeable to.

In view thereof, it is respectfully recommended that the corresponding payment order be issued to effect the immediate collection of the noted deficiency assessment per investigation. Furthermore, it is also recommended that this case be considered closed and filed for future reference upon full settlement fo the deficiency tax assessment.

Submitted By:

(signed)
GENE G. ETORMA
Revenue Officer II

(signed)
MARIO H. ELEDA
Group Supervisor

Noted By:

(signed)
CESAR D. ESCALADA
OIC-Revenue District Officer

Reviewed By:

MIRIAM P. AGUILA
Chief, Assessment Division

Approved By:

ANSELMO G. ADRIANO
Regional Director".

As a corollary, as We have pointed out earlier and in the assailed Decision, the facts and law upon which the subject assessments were made are very much different from the reasons above-stated.

Thus, insofar as petitioner's Motion is concerned, the supposed *"advanced payments"* cannot be treated in the computation of petitioner's reduced tax liabilities as decreed in the assailed Decision. And as regards respondent's Motion, the said *"partial payments"* made by petitioner cannot be taken against the latter.

Estoppel has set in against respondent.

As We have stated in the assailed Decision, it is undisputed that petitioner failed to file a protest within thirty (30) days from receipt of the FAN, and that such fact was raised as a defense in respondent's Answer[21]. However, as We have already ruled, respondent should not be allowed to raise the same as a defense, because the BIR has already admitted in effect, at the administrative level that the subject assessments have not become final and executory upon such ground.

[21] Refer to paragraph 7, respondent's Answer, Docket, p. 122.

In her Motion, respondent never denied the exchange of communications between petitioner and the BIR which transpired after the receipt of the FAN by petitioner,[22] including the issuance of the Tax Verification Notice dated March 18, 2008[23] and the Final Decision and Disputed Assessment dated July 16, 2008[24], which are all indifferent as the finality of the subject assessments because of petitioner's failure to file a valid protest. The BIR even went to the extent of preparing Authorities To Cancel Assessment for petitioner's deficiency income tax, VAT, documentary stamp tax assessments, and compromise penalty, upon the recommendation of Revenue District Officer Ricardo B. Espiritu.[25] Parenthetically, in view of the ATCA for the deficiency VAT, petitioner also made a payment relative thereto in the amount of ₱ 240,914.23.[26] It therefore came as a surprise to petitioner[27] when the BIR issued the Warrant of Distraint and/or Levy No. 2011-011 dated January 6, 2011[28] against it.

Simply put, petitioner was led to believe that the failure to file a valid protest within the thirty-day period was not an issue at all. In fact, it believed that the subject assessments will already be cancelled.

To reiterate, the doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result.[29]

For estoppel to exist, it is indispensable that there be a declaration, act or omission by the party who is sought to be bound. Nor is this all. It is equally a requisite that he, who would claim the benefits of such a principle, must have altered his position, having

---

[22] Exhibit "I-3", Docket, p. 371; BIR Records, p. 210; Exhibit "I-4", Docket, p. 372; BIR Records, p. 211; Exhibit "I-5", Docket, p. 373; BIR Records, p. 213; and BIR Records, pp. 216 to 21.
[23] Exhibit "11", BIR Records, p. 225.
[24] Exhibit "K", Docket, pp. 376 to 379.
[25] BIR Records, pp. 266 to 277.
[26] BIR Records, p. 265 in relation to p. 273; Par. 13, Joint Stipulation of Facts and Issues, Docket, p. 172; and Par. 3, SJSF, Docket, p. 477.
[27] BIR Records, pp. 354 to 355.
[28] Par. 9, Amended Joint Stipulation of Facts, Docket, p. 491.
[29] *Philippine National Bank vs. Court of Appeals, et al., etseq.*, G.R. Nos. L-30831 & L-31176, November 21, 1979.

benefits of such a principle, must have altered his position, having been so intentionally and deliberately led to comport himself thus, by what was declared or what was done or failed to be done. **If thereafter a litigation arises, the former would not be allowed to disown such act, declaration or omission. The principle comes into full play. It may successfully be relied upon. A court is to see to it then that there is no turning back on one's word or a repudiation of one's act.**[30]

As applied to the present case, it would be the height of unfairness and injustice if respondent would be allowed to raise the defense that the subject assessments have become final and executory against petitioner, who relied in good faith on the actions taken by BIR after the issuance of the same assessments.

WHEREFORE, all the foregoing considered, petitioner's Motion for Reconsideration filed October 1, 2014 and respondent's Motion for Partial Reconsideration filed on October 8, 2014 are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I maintain my dissenting opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

---

[30] *Dizon vs. Suntay*, G.R. No. L-30817, September 29, 1972.