REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COSMOS BOTTLING CORPORATION, *Petitioner,*	**CTA *EB* NO. 2081** *(CTA Case No. 9405)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondents.*	Promulgated: DEC 10 2019 3:56 p.m.

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RESOLUTION

For resolution are the following:

1) Petitioner's Urgent Motion to Suspend the Collection of Tax and to Dispense with the Posting of the Surety Bond and/or Reduce the Surety Bond (hereinafter referred to as the "Motion to Suspend") filed on 19 June 2019,[1] with Respondent's Comment on Urgent Motion to Suspend Collection of Tax filed on 30 July 2019 by registered mail,[2] and Petitioner's Reply (Re: Respondent's Comment dated 30 July 2019) filed on 30 August 2019[3]; and

2) Respondent's Motion for Reconsideration filed by registered mail on 9 October 2019,[4] with Petitioner's Comment filed on 24 October 2019.[5]

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[1] *Rollo,* Vol. 1, pp. 504-541.
[2] *Rollo,* Vol. 2, pp. 558-563.
[3] *Rollo,* Vol. 2, pp. 590-593.
[4] *Rollo,* Vol.2.
[5] *Rollo,* Vol. 2.

Motion to Suspend

In the Motion to Suspend, Petitioner prays that this Honorable Court: a) issue a Writ of Preliminary Injunction or Temporary Restraining Order or Status Quo Ante Order or Order requiring Respondent to lift the Warrant of Garnishment and Warrant of Distraint and/or Levy and suspend the collection of the alleged deficiency taxes; and b) dispense with the posting of the Surety Bond, or reduce the Surety Bond.

Petitioner submits that the collection of alleged deficiency taxes in the sum of Three Billion Seven Hundred Nine Million Six Hundred Sixty Five Thousand Five Hundred Ninety Two Pesos and 50/100 (P3,709,665,592.50), which was derived from the original Final Decision on Disputed Assessment ("FDDA"), is unfounded since it already paid the amount due per amended FDDA (*i.e.,* P51 Million). Petitioner posits that Respondent is estopped from questioning the legality of the original FDDA since it relied on Deputy Commissioner Nestor S. Valeroso's authority to issue the amended FDDA. Petitioner likened the amended FDDA to a specific interpretative ruling which, under Section 246 of the National Internal Revenue Code ("NIRC"), cannot be revoked, modified or reversed if it will become prejudicial to the taxpayer.

Petitioner further argues that the original FDDA is patently wrong and tremendously excessive as shown by the LTS' Memorandum Report dated 16 September 2016 providing only a P51 Million tax liability. Petitioner stresses that this Report enjoys the presumption of regularity in the performance of official duties. Moreover, considering that the instant case was dismissed by this Court's First Division for alleged forum shopping, Petitioner asserts that the amended FDDA, which similarly enjoys the presumption of regularity in the performance of official duties, remained valid as the issue on its legality was not tried upon. And even assuming that there was forum shopping in this case, the issuance of the amended FDDA constitutes res judicata and is therefore final and executory. In fact, Petitioner paid the amount due in the amended FDDA.

Petitioner then submits that a motion for suspension of collection is akin to injunction proceedings. Petitioner detailed its compliance with the requisites or conditions of injunction, *viz*:

1) A clear legal right sought to be protected exists – Petitioner's right to due process and right to property;

2) The act sought to be enjoined is violative of that right - Respondent's collection efforts violate Petitioner's right to due process since the revenue officers who audited Petitioner's books had no authority, and the deficiency tax assessments had already prescribed as the second to fifth waivers were invalid. The violation of Petitioner's right to due process is material and substantial considering that the garnishment of its bank accounts would adversely affect the settlement of its current liabilities in the amount of One Billion Four Hundred Eleven Million Forty-Nine Thousand Pesos (P1,411,049,000.00);

3) There is an urgent and paramount necessity for the writ to prevent serious damage – Petitioner cannot access its funds to pay for its expenses and liabilities.

Petitioner attached the Affidavit of Mr. Romano A. Maglalang[6] in support of the Motion to Suspend. Mr. Maglalang declared that:

> "The issuance by the BIR of the said Warrants of Garnishment and Warrant of Distraint and/or Levy is prejudicial to the interest of CBC since they will definitely disrupt the settlement/payment of trade obligations to its suppliers and the online bank payments of tax obligations through eFPS. In other words, such Warrant of Garnishment and Warrant of Distraint and/or Levy will most likely result to the total collapse of CBC or the killing of the proverbial "goose that lays the golden egg."[7]

On 30 July 2019, Respondent filed his Comment on the Motion to Suspend. He alleged that a party seeking injunctive relief must come to court with clean hands. Petitioner should not be allowed injunctive relief from the consequences brought by its own act of bringing the decision it simultaneously procured from a different forum to this Court, and then insist that such shopped decision be validated by this Court. Further, he stated that Petitioner's grounds are neither relevant to a suspension order nor have merit.

On 30 August 2019, Petitioner moved to admit its Reply to Respondent's Comment, which was granted in a Resolution by this Court dated 19 September 2019.[8] In said Reply, Petitioner asserts that it went to this Court with clean hands; it did not commit forum shopping; and Respondent failed to observe the mandatory issuance of LOAs and the rule on statute of limitations under Section 223 of the NIRC.

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6 *Rollo*, Vol.1, p. 536
7 *See Affidavit of Mr. Romano A. Maglalang, Rollo*, p. 536.
8 *Rollo*, Vol. 2, p. 608-609.

We rule to deny the Motion to Suspend.

Injunction is not available to restrain the collection of tax pursuant to Section 218 of the NIRC, which provides:

> "Sec. 218. *Injunction not Available to Restrain Collection of Tax* – No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code."

However, Section 11 of Republic Act ("R.A.") No. 1125,[9] as amended by R.A. No. 9282,[10] allows the suspension of collection of taxes if in the Court's opinion, the collection may jeopardize the interest of the government and/or the taxpayer, *viz*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
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> xxx xxx xxx
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> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: <u>*Provided, however,* That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the</u>

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9 *An Act Creating the Court of Tax Appeals*, June 16, 1954.

10 *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes*, March 30, 2004.

taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."[11]

Meanwhile, Rule 10 of the Revised Rules of the Court of Tax Appeals embodies the general rule and the exception to the suspension of collection of taxes in this wise:

> "**SEC 1.** *No suspension of collection of tax, except as herein prescribed.* – No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed. (n)
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> **SEC. 2.** *Who may file.* – Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardize the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability. (RCTA, Rule 12, sec. 1a)"

Pursuant to the foregoing, the Court is empowered to suspend the collection of taxes if it will jeopardize the interest of the government or the taxpayer, subject to the filing of a motion by an interested party.

Upon evaluation of the instant case however, We find no basis for the suspension of the collection of the tax. Aside from the bare allegation contained in the Affidavit of Mr. Romano A. Maglalang that the collection of the alleged deficiency taxes "will definitely disrupt the settlement/payment of trade obligations to [Cosmos Bottling Corporation's] suppliers and the online bank payments of tax obligations"[12], there is nothing in the records which will prove the said claim. Mere allegation is not evidence and is not equivalent to proof.[13]

Motion for Reconsideration

On 9 October 2019, Respondent filed by registered mail his Motion for Reconsideration of this Court's Resolution, dated 19 September 2019, denying his Urgent Motion for Additional Time to File Comment and expunging his Comment from the records.[14]

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[11] *Underscoring supplied.*
[12] *See Affidavit of Mr. Romano A. Maglalang, Rollo,* p. 536.
[13] *Republic of the Philippines v. Ludyson C. Catubag,* G.R. No. 210580, April 18, 2018 *citing Republic of the Philippines v. Edna Orcelino-Villanueva,* G.R. No. 210929, July 29, 2015.
[14] *Rollo,* Vol. 2, pp. 608-609.

In the Motion for Reconsideration, Respondent alleges that he did not yet receive the 9 August 2019 Resolution (giving him a **non-extendible period** of ten (10) days or until 14 August 2019 to file a Comment on the Petition for Review)[15] when he filed for another extension on 14 August 2019;[16] and the second extension was filed in good faith and brought by sheer necessity as Respondent's counsel performs several other duties aside from handling the instant case.

On 24 October 2019, Petitioner filed a Comment on the Motion for Reconsideration. It objected to the admission of Respondent's Comment on the Petition for Review[17] for having been filed out of time. Petitioner alleged that Respondent should be mindful that this Court has the discretion to grant a motion for extension, and Respondent should never presume that any request for extension will be granted.

We rule to deny the Motion for Reconsideration.

In *Levi Strauss & Co. v. Atty. Ricardo R. Blancaflor, in his official capacity as the Director General of the Intellectual Property Office,* the Supreme Court ruled that "[m]otions for extensions are **not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extensions or postponement will be granted** or that they will be granted the length of time they pray for."[18]

Respondent erroneously presumed that this Court granted his first motion for extension without reservations (*i.e.,* that the extension will be final and non-extendible). Worse, he anticipated that his second extension will be granted. This Court cannot reward such negligence by Respondent.

While this Court recognizes the heavy workloads of Respondent's lawyers, level of workload should not be constantly and conveniently used as an excuse for an extension. Otherwise, there would be no end to litigation so long as counsel is not sufficiently diligent or experienced,[19] and the litigants' right to speedy justice will be violated.

WHEREFORE, Petitioner's Urgent Motion to Suspend the Collection of Tax and to Dispense with the Posting of the Surety Bond and/or Reduce

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15 *Rollo,* Vol. 2, p. 564.
16 *Rollo,* Vol. 2, pp. 565-569.
17 *Rollo,* Vol. 2, pp. 575-584.
18 G.R. No. 206779, 20 April 2016 *citing Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation,* G.R. No. 152801, 20 August 2004, 437 SCRA 145, 150. *Emphases and underscoring supplied.*
19 *Hector Hernandez v. Susan San Pedro Agoncillo,* G.R. No. 194122, 11 October 2012.

the Surety Bond, and Respondent's Motion for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice