REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

8196 CONVENIENCE CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 9818

Members:

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

Promulgated:

JUN 14 2022 8:02 am

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RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is respondent Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration (Re: Decision promulgated on 10 June 2021)* filed on July 12, 2021, without petitioner's comment/opposition for failure to file the same within the time prescribed in the Court's Resolution dated July 29, 2021.[1]

Respondent seeks reconsideration of the Court's Decision promulgated on June 10, 2021 (Assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** Accordingly, the FLD and Assessment Notice Nos. 33-09-IT-4378, 33-09-VT-4379 and 33-09-WE-4380, all dated January 14, 2013, issued against petitioner, are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED**."

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[1] Records Verification dated March 4, 2022.

Respondent assails this Court's Decision based on the following grounds:

"I.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENTS. HAD NOT YET BECOME FINAL AND DEMANDABLE.

II.

THE HONORABLE COURT ERRED IN DECLARING THE ASSESSMENTS VOID FOR THE ALLEGED FAILURE ON THE PART OF RESPONDENT TO ISSUE LETTER OF AUTHORITY IN FAVOR OF REVENUE OFFICER MIDA PEREZ AND GROUP SUPERVISOR OSCAR P. DERA."

In assailing the Decision, respondent asserts that the subject assessments have become final and demandable for failure of petitioner to submit the relevant supporting documents to accompany its request for reinvestigation in protest against the tax deficiency assessments issued. Respondent argues that the documents submitted by petitioner such as the 1st, 2nd and 3rd quarterly value-added tax (VAT) returns were already in his possession when it computed the alleged tax deficiencies of petitioner for taxable year (TY) 2009, hence, these were no longer relevant to the revenue examiners to assist them in re-evaluating the deficiency assessments. Respondent considers the failure to submit "relevant supporting documents" a fatal flaw which resulted to the finality of the tax deficiency assessments issued, pursuant to Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent further argues that since there was no valid protest or request for reinvestigation filed against said deficiency tax assessments, then there was no fresh round of review that would necessitate the issuance of a Letter of Authority (LOA) to further clothe the new set of officers with the requisite authority to pursue the tax investigation. Respondent narrates that when petitioner sought for the reinvestigation of its 2009 deficiency tax assessments, it failed to submit new documents to enable the new set of officers to conduct any audit investigation, rendering the issuance of a new LOA superfluous

In sum, respondent avers that the assessments having become final and demandable, petitioner is obligated to pay the assessed amount inclusive of increments for TY 2009 Respondent ends his arguments with the well-established principle that in the absence of proof of any irregularities in the performance of their duties, an assessment issued by the Bureau of Internal Revenue (BIR), is presumed correct.

RULING OF THE COURT

We deny the motion.

In his motion for reconsideration, respondent acknowledges that petitioner submitted documents in support of its request for reinvestigation[2] only that these were not considered "relevant" to assist the revenue examiners to review and/or re-evaluate the subject tax deficiency assessments for TY 2009 rendering the latter final, executory and demandable.

We do not agree with respondent.

The facts as outlined in the assailed Decision show that the Formal Letter of Demand (FLD)/deficiency assessments for TY 2009 were based on the "best evidence obtainable rule" and in his Answer to the Petition for Review, respondent maintained that such method is sanctioned by Sections 2.3, 2.4 (a) and (b) of Revenue Memorandum Circular (RMC) No. 23-2000 which provide for instances when an assessment may be based on the best evidence obtainable.

This Court recognizes the method of assessment based on best evidence which finds its legal basis in Section 6 (B) of the 1997 NIRC, as amended, quoted as follows:

> "Section 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement* . –
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> xxx xxx xxx

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[2] Filed on February 6, 2013. *on*

> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
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> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner **shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes.**" (emphasis supplied)

Based on the afore-quoted provision, an assessment may be based on the best evidence obtainable when a report or documents requested from the taxpayer are not forthcoming. It authorizes the Commissioner of Internal Revenue (CIR) to obtain information from sources other than the taxpayer or from third-party sources.

Given that respondent's revenue examiners (RO) initially took the liberty to base their conclusions on documents and third-party information which were available at that time to assess petitioner's tax deficiencies other than the requested records from the taxpayer, this Court finds it presumptuous on the part of respondent to judge which documents are relevant or not to support petitioner's protest. Even granting that the assessment was not based on the best evidence obtainable, the law and its implementing regulations give the taxpayer the right to file a protest against it and to submit supporting documents in support thereof, as provided in Section 228 of the 1997 NIRC, as amended, quoted as follows:

> "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: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**" (Emphasis supplied)

The finality of the assessments as provided in the afore-quoted Section 228 of the 1997 NIRC, as amended, becomes operative upon the failure to file a timely protest and submit documents in support thereof and not on whether or not the CIR and/or his representatives find the documents to be "relevant," otherwise, the finality of the assessments will depend not on the applicable laws and regulations but on the discretion of the revenue examiners and eventually the respondent, which will be prejudicial to the taxpayers. This is precisely the scenario which the Supreme Court seeks to prevent, when it ruled in this wise:

> **"We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet.** Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
>
> **The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.**"[3] (emphases supplied)

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[3] *CIR vs. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.

The records show that petitioner submitted supporting documents such as the 1st, 2nd and 3rd Quarterly VAT returns and Filing References for the Expanded Withholding Tax (EWT) Returns (BIR Form 1601E) for TY 2009 to support the defenses and arguments embodied in its protest letter/request for reinvestigation.

We find the submission of the aforesaid documents as substantial compliance with the requirements provided under Section 228 of the 1997 NIRC, as amended.

Having ruled thus, the other argument of respondent as regards the requisite authority of the revenue examiners deserves scant consideration as this is inextricably linked to his main contention of finality of assessments due to petitioner's alleged failure to submit relevant supporting documents. We therefore affirm our ruling that the subject deficiency tax assessments for TY 2019 are inescapably void for lack of authority of the revenue examiners to conduct the reinvestigation.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Re: Decision promulgated on 10 June 2021)* filed on July 12, 2021, is **DENIED** for lack of merit.

Accordingly, the Decision of the Court in the above-captioned case dated June 10, 2021, is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion on the Decision)
ROMAN G. DEL ROSARIO
Presiding Justice

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

am