REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

POLYMER PRODUCTS (PHIL.), INC.,
Respondent.

CTA EB No. 1320
(CTA Case No. 8299)

Present:

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
MAR 2 1 2017 3:10pm

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RESOLUTION

BAUTISTA, J:

This resolves the Commissioner of Internal Revenue's ("CIR") Motion for Reconsideration (Re: Decision dated September 9, 2016) ("Motion for Reconsideration") filed on October 12, 2016, with respondent Polymer Products (Phil.), Inc.'s ("PPPI") Comment (On Petitioner's Motion for Reconsideration dated October 10, 2016), filed on December 21, 2016.

On September 9, 2016, the Court *En Banc* promulgated a Decision ("Assailed Decision"), the dispositive portion of which states:

> **WHEREFORE,** premises considered, the Petition for Review filed by petitioner is hereby **DENIED**. The Court *En Banc* hereby **AFFIRMS *IN TOTO*** the Decision of the First

Division dated January 30, 2015, as well as its Resolution dated May 20, 2015.

SO ORDERED.[1]

In his Motion for Reconsideration, the CIR avers that the Court in Division erred in cancelling and withdrawing the Formal Letter of Demand ("FLD") No. 043-A-8319-07 with Details of Discrepancies and Assessment Notices in its Decision dated January 30, 2015 on the ground that the CIRS's Motion for Reconsideration was *pro forma,* which rendered the Decision of the Court in Division final and executory.

The CIR insists that the assessment for deficiency income tax, value-added tax ("VAT") and expanded withholding tax ("EWT") for taxable year ("TY") 2007, amounting to Php54,210,609.97 is valid for it has not violated respondent Polymer Products (Phil) Inc.'s ("PPPI") right to due process; that FLD No. 043-A-8319-07 and assessment notices demanding the payment of deficiency income tax, VAT and EWT were issued by the Bureau of Internal Revenue ("BIR") before the lapse of the fifteen (15)-day period for PPPI to respond or file a reply to the Preliminary Assessment Notice ("PAN"); that *Section 3, of Revenue Regulations ("R.R.") No. 12-99,* as amended by *R.R. No. 18-2013,* does not require that the period of fifteen (15) days be exhausted for the Final Assessment Notice ("FAN") to be issued.

The CIR maintains that PPPI was given due process as it was able to intelligently contest the FAN by filing a protest letter within the period provided by law; that the essence of due process is simply an opportunity to be heard, logically preconditioned on prior notice, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling being complained.

The CIR alleges that his right to assess PPPI has not yet prescribed since the PAN and the FAN were issued on December 17, 2010 and January 7, 2011, respectively, well within the three (3) year prescriptive period.

[1] Emphasis retained.

Lastly, the CIR maintains that tax assessment by tax examiners are presumed correct and made in good faith; that an assessment will not be disturbed in the absence of proof of any irregularities in the performance of official duties; and that all presumptions are in favor of tax assessments.

In its Comment, respondent PPPI counter-argues that the Court *En Banc* was correct in affirming the decision of the Court in Division that the CIR's Motion for Reconsideration is *pro forma* for failing to observe the mandatory requirements under *Sections 4* and *5, Rule 15 of the 1997 Rules of Civil Procedure* and *Section 3, Rule 15 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*; that CIR's *pro forma* Motion for Reconsideration did not suspend the running of the fifteen (15)-day period to appeal the decision of the Court in Division, hence it has already become final; that the CIR's request for leniency in the application of the rules of procedure is unjustified for having failed to provide justification for the relaxation of procedural rules; that his failure to raise the denial of his *pro forma* Motion for Reconsideration as an issue before the Court *En Banc* show an utter disregard of the rules of procedure; and that the CIR has failed to provide justification for the relaxation of procedural rules.

PPPI avers that CIR violated its right to procedural due process when he issued the FAN and FLD on January 7, 2011, or only four (4) days from its receipt of the PAN; that it was not given the opportunity to respond to the PAN; that the *1997 NIRC* and *R.R. No. 12-99*, as amended, specifically give taxpayers fifteen (15) days from receipt of the PAN within which to reply thereto; that the CIR's right to assess PPPI for alleged deficiency VAT for the first (1st) to third (3rd) quarters of TY 2007, and for deficiency EWT for the months of January to November of TY 2007, have already lapsed; that the documents in support of its protest were disregarded or refused without explanation or legal basis; that the tax audit was conducted without the proper letter of authority; that the PAN and FAN do not contain the facts and the law upon which the assessments were based, contrary to law, regulations and jurisprudence; that it had no undeclared sales/income in TY 2007, which can result in deficiency income tax and VAT.

After a careful review of the grounds raised in the Motion for Reconsideration and the corresponding Comment thereto, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision. Petitioner CIR failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds the Motion for Reconsideration devoid of merit. Nevertheless, the Court will expound on some of the issues raised, if only to reinforce the discussion in the Assailed Decision.

Procedural rules were made in order to facilitate the adjudication process. Thus, in *Juanito Magsino vs. Elena de Ocampo and Ramon Guico*[2], citing *Garbo vs. Court of Appeals*[3] the Supreme Court ruled as follows:

> Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.
>
> Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.
>
> The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them. We have repeatedly emphasized this standard. Xxx[4]

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[2] *Juanito Magsino vs. Elena de Ocampo and Ramon Guico,* G.R. No. 166944, August 18, 2014, citing *Garbo vs. Court of Appeals,* G.R. No. 107698, July 5, 1996, 258 SCRA 159, *Bolos vs. Bolos,* G.R. No. 186400, October 20, 2010, 634 SCRA 429.
[3] G.R. No. 107698, July 5, 1996, 258 SCRA 159.
[4] Underscoring ours.

Applying this to the instant case, the Court *En Banc* reiterates that the CIR's failure to comply with the requirement of notice and hearing in his Motion for Reconsideration before the Court in Division and his failure to raise as an issue the denial of his Motion for Reconsideration for being *pro forma* is fatal to his cause.

In addition, the Court *En Banc* notes that the allegation that the CIR's right to make an assessment for income tax, VAT and EWT for TY 2007 has not yet prescribed was not raised in his Motion for Reconsideration before the Court in Division or in his Petition for Review before the Court *En Banc*.

Thus, as held by the Supreme Court held in the case *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[5] to wit:

> Lastly, we note that petitioner is raising the issue of prescription for the first time in the instant motion for reconsideration. Although the same was raised in the petition for review, it was dismissed for late filing. No motion for reconsideration was filed hence the disputed assessment became final, demandable and executory. Thereafter, petitioner filed with the Court of Tax Appeals a petition for relief from judgment. However, it failed to raise the issue of prescription therein. After its petition for relief from judgment was denied by the Court of Tax Appeals for lack of merit, petitioner filed a petition for review before this Court without raising the issue of prescription. It is only in the instant motion for reconsideration that petitioner raised the issue of prescription which is not allowed. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court *En Banc* in the Assailed Decision, petitioner's

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[5] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.

Motion for Reconsideration is hereby **DENIED** for lack of merit. The Assailed Decision dated September 9, 2016 is hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen S. - L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice