Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **NEWSPAPER PARAPHERNALIA, INC.,** Respondent.	**CTA EB No. 1425** (CTA Case No. 8599) Present: DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *J.J.* Promulgated: SEP 25 2017 2:45 p.m.

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RESOLUTION

CASANOVA, *J.*:

Before Us, for resolution, is petitioner-Commissioner of Internal Revenue's Motion for Reconsideration filed, thru registered mail, on May 25, 2017, with respondent's Comment/Opposition (Re Motion for Reconsideration dated 25 May 2017), filed on August 10, 2017.

Petitioner seeks reconsideration of this Court's Decision, promulgated on April 21, 2017, the decretal portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Assailed Decision dated October 19, 2015 and the Assailed Resolution dated January 22, 2016, both rendered by the CTA-Third Division, are both hereby **AFFIRMED**.

SO ORDERED."

on the ground that the said Decision is contrary to the facts and applicable law, rules and regulations.

Petitioner argues that, since respondent failed to file a timely protest to the assessment, the same had become final, executory and unappealable. Thus, the Court of Tax Appeals has no jurisdiction to entertain and determine the correctness of an assessment that has attained finality.

In its Comment/Opposition, respondent contends that petitioner's ground for reconsideration has already been aptly threshed out in the proceedings before the *En Banc* and Third Division of the Honorable Court; and, no new matter was raised by petitioner to warrant and reconsideration of the Assailed Decision. Nevertheless, respondent proceeded to reiterate its counter-arguments that: the assessment relied upon by petitioner in his Motion is void and of no effect for having been issued beyond the period allowed by law and, as such, the date of filing of the Protest Letter is immaterial because the assessment did not become final, executory, demandable and unappealable; that, the Honorable Court acquired jurisdiction over the subject matter despite petitioner's position alleging lack of disputed assessment since respondent failed to file a Protest Letter to the FAN within thirty (30) days from receipt thereof. Respondent argues that, even assuming there is, indeed, no disputed assessment as alleged by petitioner, BIR's right to collect an assessment may still be reviewed by this Court and is properly included as "other matters" arising under the National Internal Revenue Code (NIRC).

After taking a second hard look at the arguments advanced by petitioner in his Motion for Reconsideration, we find the same are mere rehash of his arguments in his Petition for Review which had already been exhaustively discussed and passed upon in the Assailed Decision.

Petitioner continues to harp on the argument that, since respondent failed to file a timely protest to the Final Assessment Notice ("FAN") dated June 6, 2011, the assessment became final, executory and unappealable.

We reiterate that the FAN dated June 6, 2011 was issued beyond the 3-year prescriptive period, thus, the same did not attain finality. Respondent's failure to timely protest the FAN is of no moment. As succinctly held by the Supreme Court in *Metro Star Superama vs. Commissioner of Internal Revenue*,[1] citing the case of *Commissioner of Internal Revenue vs. Azucena T. Reyes*[2], viz:

> "The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit."

In his Concurring Opinion in the Assailed Decision, this Court's Presiding Justice Roman G. Del Rosario, citing the same Supreme Court decision, stated, thus:

> "An assessment, however, **may neither attain finality nor be the subject of a lawful execution in situations where such assessment was issued without authority, such as when the CIR's right to assess has prescribed, or when there is a violation of the taxpayer's right to due process**. Thus, in Metro Star Superama, Inc. vs. Commissioner of Internal Revenue, the Supreme Court emphasized that a void assessment bears no fruit.
>
> Here, the FAN issued against NPI, having been issued beyond the three-year prescriptive period for the CIR to assess NPI for deficiency income tax and VAT, is void *ab initio* and without legal effect. Notwithstanding NPI's failure to protest the **void FAN** within thirty (30) days from receipt thereof, **it has not attained finality and it does not give rise to an enforceable tax liability against NPI.**"

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[1] G.R. No. 185371, December 8, 2010.
[2] G.R. No. 159694 & G.R. No. 163581, January 27, 2006.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice