REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

ADELARDO K. PAGENTE,
Petitioner,

-versus-

HON. ESMERALDA M. TABULE,
HON. NELSON ASPE and
HON. KIM JACINTO HENARES,
Respondents.

CTA EB No. 1030
(CTA Case No. 8280)

Present:

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

Promulgated:

JAN 3 0 2015
3:30 p.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is petitioner's Motion for Reconsideration[1] initially filed on July 4, 2014. However, due to the insufficient number of copies submitted by petitioner, the Court *En Banc* resolved to order petitioner to submit additional copies of his Motion for Reconsideration.

On August 8, 2014, the Court received petitioner's "Compliance with Submission" posted on August 5, 2014. Petitioner seeks reconsideration of this Court's Decision[2], promulgated on June 3, 2014, the dispositive portion of which reads:

---

[1] *Rollo*, pp. 243-246.
[2] *Rollo*, pp. 221-238.

"**WHEREFORE**, considering all of the foregoing premises, the instant Petition for Review is **DENIED** for lack of merit."

As grounds for its Motion for Reconsideration, petitioner asserts the following:

1. That the Court of Tax Appeals has jurisdiction over the petition as the nature of the case is considered included under "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue";

2. That the authority of Dir. Gandarosa in signing the PAN is questionable as it is clear on record that he was removed from his position or jurisdiction and, consequently, petitioner is entitled to some relief due to the effects of the unauthorized act of Dr. Gandarosa; and

3. That the petitioner was not afforded due process since his February 18, 2010 letter clearly stated that he did not receive the FLD, FAN, and the Notice of Delinquency. Therefore, since he is questioning the authority of the person who signed the PAN, petitioner could not also ask of any FLD and FAN.

The issues raised by petitioner in its Motion for Reconsideration are not new. They have been exhaustively studied and considered by this Court prior to rendering our Decision dated June 3, 2014.

On the issue of jurisdiction, this Court has already ruled that because petitioner failed to request for reconsideration or reinvestigation within the 30-day period set by law, petitioner's failure to timely raise a dispute upon which the CIR could have rendered a final decision appealable to this Court, or over which inaction by the CIR could have been appealed to this Court renders his petition time-barred. Petitioner not only lost the remedy of protest but also of appeal, hence, the assessment attained finality and became executory.

Petitioner's argument that his petition falls under the "other matters" clause, effectively placing the matter under the jurisdiction of this Court, has also been exhaustively discussed. We have ruled that the issues presented by the petitioner all arose from the deficiency tax assessment that he failed to properly protest on time, and thus do not fall within this Court's jurisdiction, even under the "other matters" clause. For an assailed assessment to come within this Court's jurisdiction, it must first have been disputed in accordance with Section 228 of the NIRC, and there must have been a decision or inaction on the dispute by the CIR. Under Sec. 270

NIRC of 1977, an assessment that was not administratively protested on time "shall become final and unappealable."

As regards the validity of the PAN, petitioner raises no new arguments in his Motion for Reconsideration. Having established the validity of the assessment that has attained finality which can no longer be questioned on appeal, it follows that the PAN can no longer be questioned as well. Furthermore, we have ruled that even if Dir. Gandarosa was merely a *de facto* officer and no longer a *de jure* officer at the time he issued the PAN, that by itself will not divest his official acts of validity. As far as the public or third persons who are interested therein are concerned, the official acts of a *de facto* judge are just as valid for all purposes as those of a *de jure* judge.

As regards petitioner's claim that he was not afforded due process in the issuance of the deficiency assessment, we have already ruled that the evidence shows otherwise. Respondents have scrupulously observed due process, from the time it issued the PAN, until even after the assessment had attained finality, as borne by the facts of this case. Notwithstanding petitioner's failure to protest the assessment according to the procedure and periods set forth in Section 228 of the NIRC, the respondents still responded to his "Request for Ruling" and other written communications. Clearly, petitioner was given every opportunity to champion his cause and his allegations of lack of due process has no leg to stand on.

WHEREFORE, considering all of the foregoing premises, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

ADELARDO K. PAGENTE,

Petitioner,

-versus-

HON. ESMERALDA M. TABULE, HON. NELSON ASPE and HON. KIM JACINTO HENARES,

Respondents.

CTA EB No. 1030
(CTA Case No. 8280)

Present:

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

Promulgated:

JAN 30 2015
3:30 p.m.

x - x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is petitioner's Motion for Reconsideration[1] initially filed on July 4, 2014. However, due to the insufficient number of copies submitted by petitioner, the Court *En Banc* resolved to order petitioner to submit additional copies of his Motion for Reconsideration.

On August 8, 2014, the Court received petitioner's "Compliance with Submission" posted on August 5, 2014. Petitioner seeks reconsideration of this Court's Decision[2], promulgated on June 3, 2014, the dispositive portion of which reads:

[1] *Rollo*, pp. 243-246.
[2] *Rollo*, pp. 221-238.

"**WHEREFORE**, considering all of the foregoing premises, the instant Petition for Review is **DENIED** for lack of merit."

As grounds for its Motion for Reconsideration, petitioner asserts the following:

1. That the Court of Tax Appeals has jurisdiction over the petition as the nature of the case is considered included under "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue";

2. That the authority of Dir. Gandarosa in signing the PAN is questionable as it is clear on record that he was removed from his position or jurisdiction and, consequently, petitioner is entitled to some relief due to the effects of the unauthorized act of Dr. Gandarosa; and

3. That the petitioner was not afforded due process since his February 18, 2010 letter clearly stated that he did not receive the FLD, FAN, and the Notice of Delinquency. Therefore, since he is questioning the authority of the person who signed the PAN, petitioner could not also ask of any FLD and FAN.

The issues raised by petitioner in its Motion for Reconsideration are not new. They have been exhaustively studied and considered by this Court prior to rendering our Decision dated June 3, 2014.

On the issue of jurisdiction, this Court has already ruled that because petitioner failed to request for reconsideration or reinvestigation within the 30-day period set by law, petitioner's failure to timely raise a dispute upon which the CIR could have rendered a final decision appealable to this Court, or over which inaction by the CIR could have been appealed to this Court renders his petition time-barred. Petitioner not only lost the remedy of protest but also of appeal, hence, the assessment attained finality and became executory.

Petitioner's argument that his petition falls under the "other matters" clause, effectively placing the matter under the jurisdiction of this Court, has also been exhaustively discussed. We have ruled that the issues presented by the petitioner all arose from the deficiency tax assessment that he failed to properly protest on time, and thus do not fall within this Court's jurisdiction, even under the "other matters" clause. For an assailed assessment to come within this Court's jurisdiction, it must first have been disputed in accordance with Section 228 of the NIRC, and there must have been a decision or inaction on the dispute by the CIR. Under Sec. 270

NIRC of 1977, an assessment that was not administratively protested on time "shall become final and unappealable."

As regards the validity of the PAN, petitioner raises no new arguments in his Motion for Reconsideration. Having established the validity of the assessment that has attained finality which can no longer be questioned on appeal, it follows that the PAN can no longer be questioned as well. Furthermore, we have ruled that even if Dir. Gandarosa was merely a *de facto* officer and no longer a *de jure* officer at the time he issued the PAN, that by itself will not divest his official acts of validity. As far as the public or third persons who are interested therein are concerned, the official acts of a *de facto* judge are just as valid for all purposes as those of a *de jure* judge.

As regards petitioner's claim that he was not afforded due process in the issuance of the deficiency assessment, we have already ruled that the evidence shows otherwise. Respondents have scrupulously observed due process, from the time it issued the PAN, until even after the assessment had attained finality, as borne by the facts of this case. Notwithstanding petitioner's failure to protest the assessment according to the procedure and periods set forth in Section 228 of the NIRC, the respondents still responded to his "Request for Ruling" and other written communications. Clearly, petitioner was given every opportunity to champion his cause and his allegations of lack of due process has no leg to stand on.

WHEREFORE, considering all of the foregoing premises, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice