REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, REVENUE DISTRICT OFFICER (RDO), COLLECTION OFFICERS OF REVENUE DISTRICT OFFICE 57 (RDO-57) BIÑAN and SAN PEDRO LAGUNA,
Petitioners,

- versus -

T SHUTTLE SERVICES, INC.,
Respondent.

CTA EB NO. 1565
(CTA Case No. 8650)

Present:

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

Promulgated:

JUL 16 2018 2:18 p.m.

x- -x

RESOLUTION

Fabon-Victorino, J.:

In their *Motion for Reconsideration (Re: Decision promulgated on 03 April 2018)*[1] filed on May 2, 2018, petitioners assail the Decision[2] promulgated on April 3, 2018, the dispositive portion of which reads:

> **WHEREFORE**, the *Petition for Review* filed by petitioners Commissioner of Internal Revenue, Revenue District Officer, and Collection Officers of Revenue District

[1] *En Banc* docket, pp. 141-160.
[2] *En Banc* docket, pp. 106-124.

Office (RDO-57) Biñan and San Pedro Laguna, on December 20, 2016 is hereby **DENIED**, for lack of merit.

SO ORDERED.

The assailed Decision sustained the ruling of the Court in Division cancelling and setting aside of the Final Assessment Notice (FAN) dated July 20, 2010 and the *Warrant of Distraint and/or Levy* (WDAL) No. 057-03-13-074-12, issued against respondent for calendar year 2007.

Petitioners raise the following grounds in their plea for reconsideration, to wit:

I. WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION. THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

II. WHILE MAINTAINING THAT THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION, THE HONORABLE COURT ERRED IN DECLARING THE ASSESSMENTS VOID FOR THE ALLEGED FAILURE ON THE PART OF PETITIONERS TO PROVE SERVICE THEREOF TO RESPONDENT.

In its *Comment/Opposition*[3] respondent submits that petitioner's *Motion for Reconsideration* lacks merit. It argues that petitioners are already estopped from impugning the jurisdiction of the Court of Tax Appeals (CTA) over the present case which they never question or raise in any of their pleadings filed before the Court. Moreover, the issue of jurisdiction is invoked only in the instant *motion*. Citing the case of *Martinez vs. De la Merced*,[4] respondent states that a party who actively participated in the proceedings before a court claimed to have no jurisdiction is estopped from assailing the same, as what petitioner did via filing of numerous pleadings in the course of the proceedings.

Even assuming that the issue of jurisdiction can still be raised at this stage of the proceedings, petitioners' insistence that the subject assessment has already become

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[3] *En Banc* docket, pp. 165-184.
[4] 124 SCRA 182.

final, executory, and demandable is still erroneous. According to respondent, the assessment issued against it by petitioner is void for having been issued in violation of due process, particularly, in the proper service and receipt of the PAN and the FAN.

Petitioners' *motion* must fail.

On the issue of jurisdiction, petitioner failed to consider that the instant case stemmed from the *Warrant of Distraint and/or Levy* issued against respondent, which it questioned before the Court in Division *via* a *Petition for Review*.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, is instructive on the matter, thus:

> Sec. 7. *Jurisdiction*. — The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;

This provision is implemented by Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as follows:

> Sec. 3. *Cases within the jurisdiction of the Court in Divisions*. —
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> The Court in Divisions shall exercise:

(a) **Exclusive original or appellate jurisdiction to review by appeal** the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;

In myriad of cases, the term "other matters" has been ruled to include, but not limited to: review of the BIR's authority and decision to compromise;[5] prescription of the CIR's right to collect taxes;[6] **determination of the validity of a warrant of distraint and levy issued by the CIR** and the validity of a waiver of the statute of limitations.[7]

In determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed by the Court and are properly included as "other matters". The failure to protest, or to raise said issues in a protest, should not result to a waiver of said defenses, for the reason that "[a] void assessment bears no fruit."[8]

To repeat, the CTA has jurisdiction over the case under the term "other matters" pursuant to Section 7(a)(1) of RA No. 1125, as amended, and Section 3(a)(1), Rule 4 of the RRCTA.

Anent petitioners' contention that the Court *En Banc* erred in declaring the assessments void for failure of

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[5] *Consolidated cases of Philippine National Oil Company v. Court of Appeals, et al.,* and *Philippine National Bank v. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005.
[6] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010, 635 SCRA 162.
[7] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[8] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 382 SCRA 180.

petitioners to prove service thereof to respondent, suffice it to say that absent further evidence, petitioners' presentation of the Registry Return Receipts is not sufficient to prove that respondent actually received the PAN and FAN. As the Supreme Court ruled in *Ting vs. Court of Appeals*,[9] Registry Return Receipts must be authenticated to serve as proof of receipt of letters sent through registered mail. Petitioners miserably failed to meet this requirement.

Besides, even assuming that the PAN and FAN were properly and duly served and received by respondent, the FAN dated July 20, 2010 and the Assessment Notices attached thereto, are still void and without legal consequence **for lack of a definite and categorical demand to pay the assessed amount on or within a date certain**, as declared in *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*.[10]

WHEREFORE, the *Motion for Reconsideration (Re: Decision promulgated on 03 April 2018)* filed by petitioners is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
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

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[9] G.R. No. 140665, November 13, 2000.
[10] G.R. No. 128315, June 29, 1999.

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

(I maintain my Dissenting Opinion dated April 3, 2018)
CATHERINE T. MANAHAN
Associate Justice