REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDMUNDO T. ONGSIAKO, JR. and H. Tambunting Pawnshop, Inc., 822 M. Dela Fuente St., Sampaloc, Manila [now 1721 V. Fugoso St., Brgy. 315, Zone 032, Sta. Cruz, Manila],
Petitioners,

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA EB Crim. No. 031
(CTA Crim. Case No. O-196)

Present:
Del Rosario, PJ,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

OCT 26 2015
2:35 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is the Petitioners' "Motion for Reconsideration (Re Decision rendered on 26 May 2015)" filed on July 2, 2015 with Respondent's "Comment (Re: Petitioners['] Motion for Reconsideration dated 02 July 2015)" filed on August 12, 2015. Petitioners pray that this Court reverse its Decision dated May 26, 2015 and acquit the accused from any criminal and civil liability for the alleged willful non-payment of deficiency documentary stamp taxes (DST) for taxable year 1999.

The dispositive portion of the Decision dated May 26, 2015 states:

WHEREFORE, premises considered, the Amended Decision dated July 22, 2014, is **AFFIRMED.** The Petition for Review is hereby **DISMISSED.**

SO ORDERED.

The decretal portion of the affirmed Amended Decision dated July 22, 2014 provides:

> **WHEREFORE,** premises considered, plaintiff's *Motion for Partial Reconsideration (Re: Decision promulgated on 26 February 2014)* is **PARTLY GRANTED.** The Decision dated February 26, 2014 of the Special First Division of this Court is hereby **AFFIRMED** with **MODIFICATION** as regards the civil liability of accused Edmundo T. Ongsiako, Jr.
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> Accused **EDMUNDO T. ONGSIAKO, JR.** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255, in relation to Section 253 (d) and 256 of the National Internal Revenue Code of 1997, and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and is **ORDERED TO PAY** a fine in the amount of ₱10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997.
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> With regard to the civil liability, **H. TAMBUNTING PAWNSHOP, INC.** and accused **EDMUNDO T. ONGSIAKO, JR.,** are hereby held **JOINTLY and SEVERALLY LIABLE TO PAY** the amount of **TWO MILLION SIX HUNDRED TEN THOUSAND FOUR HUNDRED SEVENTY EIGHT PESOS AND TWENTY ONE CENTAVOS (₱2,610,478.21),** representing the deficiency documentary stamp tax for the taxable year 1999, inclusive of surcharge and interest, plus 20% delinquency interest per annum from the total amount of ₱2,610,478.21, counted from February 24, 2003 until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997.
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> In addition, **H. TAMBUNTING PAWNSHOP, INC.** is further **ORDERED TO PAY** a fine of **FIFTY THOUSAND PESOS (₱50,000.00)**, pursuant to Section 256 of the NIRC of 1997.

As for accused's *Motion for Reconsideration*, the same is hereby **DENIED** for lack of merit.

SO ORDERED.

Petitioners' grounds as stated in the Motion for Reconsideration are as follows:

I. THIS HONORABLE COURT ERRED IN FINDING THAT THERE WAS WILLFUL FAILURE TO PAY A FINAL AND EXECUTORY ASSESSMENT ON THE DEFICIENCY DST DUE FOR TAXABLE YEAR 1999, FOR THE REASON BEING THAT ACCUSED SHOWED THE ABSENCE OF "WILLFULNESS" IN FAILING TO PAY THE SUPPOSED DST LIABILITY.

II. THIS HONORABLE COURT ERRED IN FINDING THAT THERE WAS WILLFUL FAILURE TO PAY A FINAL AND EXECUTORY ASSESSMENT ON THE DEFICIENCY DST DUE FOR TAXABLE YEAR 1999, FOR THE REASON BEING THAT THE DST ASSESSMENT NEVER BECAME FINAL AND EXECUTORY FOR BEING VOID BECAUSE IT INCLUDED SURCHARGE AND INTEREST, WHICH SHOULD NOT HAVE BEEN IMPOSED.

III. THIS HONORABLE COURT ERRED IN FINDING THAT THERE WAS WILLFUL FAILURE TO PAY A FINAL AND EXECUTORY ASSESSMENT ON THE DEFICIENCY DST DUE FOR TAXABLE YEAR 1999, FOR THE REASON BEING THAT THE DST ASSESSMENT INCLUDED SURCHARGE AND INTEREST, THEREBY THE ASSESSMENT WAS INCORRECT, AND, THEREFORE, NEVER BECAME FINAL AND EXECUTORY.

IV. THIS HONORABLE COURT ERRED IN FINDING THAT THE IMPOSITION OF SURCHARGE AND INTEREST IS JUSTIFIED DUE TO THE ABSENCE OF GOOD FAITH ON THE PART OF PETITIONERS.

Petitioners' argue that the accused was advised by counsel not to pay the supposed liability for the 1999 DST, which fact was never controverted by the prosecution, thus, showing the absence of "willfulness" in failing to pay the supposed DST liability; that the DST Assessment never became final and executory for the reason that the DST Assessment was void because it included surcharge and interest, which should not have been imposed; that the DST assessment never became final and executory because the amount was incorrect; and H. Tambunting Pawnshop, Inc. (HTPI) stated in its protest to the Preliminary Assessment Notice (PAN) that it was not liable for any 1999 deficiency DST.

Respondent argues that the Motion for Reconsideration filed by petitioners must be denied for failure to set the same for hearing. According to respondent, it is considered *pro forma* and a mere scrap of paper, thus, it did not toll the period to appeal. As a consequence, the assailed Decision dated 26 May 2015 has become final and executory. Respondent even cited the case, *People of the Philippines v. Court of Appeals, et al*, G.R. No. 125164, 25 September 1998.

Respondent also pointed out that the arguments raised by petitioners were mere repetitions and reiterations of those previously raised and discussed in the Petition for Review dated 29 August 2014 which have been duly considered, thoroughly, and exhaustively discussed by the Honorable Court in its Decision dated 26 May 2015. Respondent submitted that the guilt of the Petitioner has been established beyond reasonable doubt.

Hence, this resolution.

In *City of Dumaguete v. Philippine Ports Authority,*[1] the Supreme Court (SC) liberally applied the rules on notice of hearing and recognized substantial compliance with the same. It cited the case of *Philippine National Bank v. Paneda,*[2] where the SC adjudged:

> "Thus, even if the Motion may be defective for failure to address the notice of hearing of said motion to the parties concerned, the defect was cured by the court's taking cognizance thereof and the fact that the adverse party was otherwise notified of the existence of said pleading. **There is substantial compliance with the foregoing rules if a copy of the said motion for reconsideration was furnished to the counsel of herein private respondents.**" *(Emphasis Supplied)*

In an earlier case, *Preysler, Jr. v. Manila Southcoast Development Corp.,*[3] citing *Jehan Shipping Corporation v. National Food Authority,*[4] the SC held that "despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of

[1] G.R. No. 168973, August 24, 2011, 656 SCRA 102.
[2] G.R. No. 149236, February 14, 2007, 515 SCRA 639.
[3] G.R. No. 171872, June 28, 2010, 621 SCRA 636.
[4] G.R. No. 159750, December 14, 2005, 477 SCRA 781.

due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion."

In this case, respondent was furnished a copy of petitioners' Motion for Reconsideration. Respondent also filed a Comment on petitioners' motion, thus, there is substantial compliance with the requirements of due process.

Moreover, in *Basco v. Court of Appeals and the People of the Philippines,*[5] there was relaxation of the procedural rules [which refers to the prior notice of hearing of a motion for reconsideration] because "it is petitioner's life and liberty that is at stake. The trial court has sentenced him to suffer the penalty of *reclusion perpetua* and his conviction attained finality on the basis of mere technicality. **It is** but **just**, therefore, **that petitioner be given the opportunity to defend himself and pursue his appeal.** To do otherwise would be tantamount to grave injustice. **A relaxation of the procedural rules, considering the particular circumstances herein, is justified."** *(Emphases Supplied)*

"[P]rocedural rules were conceived to aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter."[6]

Applying by analogy the above jurisprudence to this instant case and considering that liberal construction of the rules is allowed in this Court as explicitly stated in Sec. 2, Rule I[7] of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, it is just that petitioner be given an opportunity to pursue his motion for reconsideration because liberty and property are at stake.

As to the merits of the motion, after a careful study of the grounds raised by the petitioners in their motion as well as the Comment of the respondent, the Court *en banc* finds no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated May 26, 2015, thus, the motion is denied.

We reiterate that "accused, as the duly authorized officer of HTPI, repeatedly failed to pay [the] 1999 deficiency DST at the time required by law or rules and regulations or upon demand by the Commissioner of Internal Revenue or any of the authorized representatives; and the failure to

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[5]. *Basco v. Court of Appeals and People of the Philippines,* G.R. No. 125290, August 9, 2000, Resolution, 392 Phil, 266.
[6] *Id.*
[7] SEC.2. *Liberal Construction.*— The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

pay a final and executory assessment, is willful."[8] Moreover, "the prosecution has duly established that accused[,] in his capacity as President of HTPI, is guilty beyond reasonable doubt for violating Section 255 in relation to Sections 253 (d) and 256 of the 1997 NIRC, as amended. The accused and HTPI are jointly and severally liable to pay the amount of [₱]2,610,478.21 representing 1999 deficiency DST, inclusive of surcharge and interest, plus delinquency interest among others."[9]

WHEREFORE, premises considered, petitioners' Motion for Reconsideration (Re Decision rendered on 26 May 2015) is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

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[8] *Rollo*, p. 308.
[9] *Id.*