REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

KONICA MINOLTA MARKETING SERVICES (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10255

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

JUL 30 2024
4:00 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.

Before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 01 March 2024)** filed via accredited courier[1] on April 4, 2024 and received by the Court on April 25, 2024, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated 4 April 2024 of the Decision of this Honorable Court dated 1 March 2024)** filed on April 29, 2024.

On March 1, 2024, the Court promulgated a Decision setting aside respondent's deficiency tax assessments for taxable year 2015 for violating petitioner's right to due process of law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for* Review is **GRANTED**. For being void, the FAN with *Details of Discrepancies* and *Assessment Notices*, all dated December 14, 2018, assessing petitioner for deficiency income tax, VAT, EWT, WTC, FWT, IAET, and compromise penalty, for taxable year 2015, in the aggregate amount of ₱98,447,592.01, inclusive of surcharge and legal interest, as well as the undated WDL and WG dated January 23, 2020, directed against petitioner, are **CANCELLED and SET ASIDE**.

[1] As per Supreme Court OCA Circular No. 22-2024 dated January 18, 2024.

Accordingly, respondent is **ENJOINED and PROHIBITED** from collecting the amount sought by the void assessment.

SO ORDERED."

In his Motion, respondent insists that the Court has no jurisdiction over the present *Petition for Review* considering his tax assessment has already attained finality due to petitioner's failure to timely protest the Final Assessment Notice (FAN). Respondent argues that the FAN was served via registered mail at petitioner's listed address with the Bureau of Internal Revenue (BIR) database, as evidenced by the Return Card tracking no. AC749971915ZZ dated January 9, 2019. Counting thirty (30) days therefrom, respondent asserts that petitioner had until February 9, 2019 to file a protest – which, unfortunately, it failed to do. Respondent further asserts that the Certification issued by postman Roy Virtudazo indicates that the FAN was marked "return to sender" since petitioner had already moved out/transferred to a different address without notifying the BIR. As such, respondent cites BIR Revenue Memorandum Order (RMO) No. 26-2016,[2] which states that an assessment shall become final and executory in case the taxpayer fail to receive any assessment notices by reason that it transferred address without updating and transferring its BIR registration.

On the other hand, in its Comment, petitioner asserts that respondent's arguments in the present Motion have already been addressed by the Court in the assailed Decision. Nonetheless, petitioner avers that respondent did not offer or present any evidence to show that the FAN was properly served to, and actually received by petitioner. Also, petitioner belies respondent's claim that it does not occupy a physical office at its registered address by the fact that petitioner was able to receive written communications from respondent every time revenue officer (RO) Melissa Carla R. Baes conducts tax investigation against petitioner. Lastly, petitioner submits that when a taxpayer received the Warrant of Distraint and Levy (WDL) without first receiving the Formal Letter of Demand (FLD) and FAN, the Supreme Court on numerous occasions held that the taxpayer should file its Petition for Review within 30 days from receipt of the WDL, which is what petitioner did in the present case.

The Court finds respondent's Motion for Reconsideration bereft of merit.

To recapitulate, the *Petition for Review* shows that what petitioner is appealing to this Court is the WDL issued by respondent for the collection of the alleged deficiency taxes for taxable year 2015. In establishing jurisdiction, petitioner alleged as follows:

> "The Petitioner now comes to this Honorable Court to question the improper collection of tax; and arbitrary issuance of the Warrant of Distraint and/or Levy and Warrant of Garnishment due to lack of due

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[2] "SUBJECT: Policies and Guidelines in Handling Disputed Assessments," dated June 13, 2016.

> process which attended it pursuant to Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals, and has thirty (30) days from its receipt thereof from the BIR to file a Petition for Review, or until 06 February 2020."[3]

Perforce, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) reads, to wit:

> "SEC. 3 *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over 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;**" *(Emphasis added)*

Concomitantly, Section 7(a)(1) of Republic Act (RA) No. 1125,[4] as amended by RA 9282,[5] vests exclusive appellate jurisdiction to this Court to review by appeal, *viz.*:

> "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;**" *(Emphasis added)*

As a hornbook principle, jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled

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[3] Par. 5, Timeliness of the Petition, *Petition for Review*, Docket – Vol. I, p. 7.
[4] "An Act Creating the Court of Tax Appeals".
[5] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA) Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes".

to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[6]

Herein, petitioner assails the validity of the undated WDL and the Warrant of Garnishment (WG) dated January 23, 2020. It should be noted that the WDL constitute an act of respondent on "other matters" arising under the National Internal Revenue Code (NIRC). As explained by the Supreme Court in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division,*[7] the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA) is not limited to cases involving decisions of the Commissioner of Internal Revenue (CIR) or matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.

With regard to respondent's claim that the assessment against petitioner has already attained finality pursuant to paragraph 15(f) of RMO No. 26-2016,[8] the Court does not agree.

At the onset, petitioner never claimed any change whatsoever in its registered address. Neither was there a hint that it transferred office or place of business. In fact, respondent himself even admitted in his *Answer* the allegation regarding the petitioner's principal office address.[9] It also worth noting that both petitioner and respondent likewise confirmed the correctness of petitioner's business address when they stipulated the office address at the 28th Floor Tower 2, The Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas Avenue, Makati City.[10]

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6 *Editha Padlan v. Elenita Dinglasan and Felicisimo Dinglasan*, G.R. No. 180321, March 20, 2013 citing *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011.

7 G.R. No. 258947, March 29, 2022.

8 "II. POLICIES AND GUIDELINES

x x x

15. An assessment shall become final, executory and demandable due to, among others, the following grounds:

x x x

(f) Failure of the taxpayer to receive any assessment notices because it was served in the address indicated in the BIR's registration database and the taxpayer transferred to a new address or closed/ceased operations without updating and transferring its BIR registration or cancelling its BIR registration as the case may be, through the accomplishment and filinf of the BIR Form No. 1905-Application for Registration Information Update, as prescribed by pertinent issuance and/or amendments thereto."

9 Par. 2, Admission/Denial, *Answer (With Special and Affirmative Defenses)*, Docket – Vol. I, p. 252.

10 Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues*, Docket – Vol. II, p. 706.

In the case of *Sixto M. Bayas and Ernesto T. Matuday v. The Sandiganbayan, et al.*,[11] the Supreme Court held that stipulations are valid and binding. Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated.

Furthermore, respondent's witness, RO Baes, acknowledged in her testimony that the PAN and other BIR letters, which were personally served to petitioner's registered address, were all validly received by the authorized representative of petitioner, to wit:[12]

> "**10 Q:** After the issuance of the Letter of Authority, what was the next step you undertook, if any?
>
> **A:** I served the Letter of Authority to the Petitioner. It was received by Minard Edanos, authorized representative of Petitioner, on November 02, 2016.
>
> x x x
>
> **15 Q:** After you prepared the First Notice for Presentation of Records, what was the next step you undertook, if any?
>
> **A:** I served the First Notice for Presentation of Records to the Petitioner. It was received by Ann Reyes, authorized representative of Petitioner, on December 12, 2016.
>
> x x x
>
> **21 Q:** After the issuance of the Second and Final Notice for Presentation of Records, what was the next step you undertook, if any?
>
> **A:** I served the Second and Final Notice for Presentation of Records to the Petitioner. It was received by Minard Edanos, authorized representative of Petitioner, on May 15, 2017.
>
> x x x
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> **28 Q:** After you prepared the Notice of Informal Conference, what was the next step you undertook, if any?
>
> **A:** I served the Notice of Informal Conference with Preliminary Summary of Tax Deficiencies to the Petitioner. It was received by Marites V. Corona, authorized representative of Petitioner, on July 11, 2018.
>
> x x x
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> **39 Q:** Do you know what was the address of the Petitioner as indicated on the Preliminary Assessment Notice (PAN)?
>
> **A:** The address indicated in the PAN is the registered address of the Petitioner which is at 28th Floor, Tower 2, The Enterprise Center, 6766 Ayala Avenue Cor. Paseo de Roxas, San Lorenzo, Makati City. This is also the address where the PAN was received by Petitioner's authorized representative, Minard Edanos, on November 26, 2018 as shown in the rubber stamp receipt dated November 26, 2018 appearing on the face of the PAN.
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> x x x
>
> **47 Q:** For the record, at what address did the FAN was mailed?
>
> **A:** The FAN was mailed to Petitioner's registered address located at 28th Floor, Tower 2, The Enterprise Center, 6766 Ayala Avenue Cor. Paseo de Roxas, San Lorenzo, Makati City.
>
> x x x
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> **50 Q:** You mentioned of the Integrated Tax System of the BIR, if shown to you a copy thereof will you be able to identify the same?

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[11] G.R. No. 143689-91, November 12, 2002.

[12] *Judicial Affidavit of Revenue Officer Melissa Carla R. Baes*, Docket – Vol. I, pp. 306 to 318.

A: Yes. This is the print-out I got from the Integrated Tax System (ITS) of the BIR, marked as Exhibit 'R-8'. It stated that Petitioner and E Work Flow Solutions, Inc. have the same registered address at 28th Floor, Tower 2, The Enterprise Center, 6766 Ayala Avenue Cor. Paseo de Roxas, San Lorenzo, Makati City submarked as Exhibit 'R-8-a'."

The Court cannot also ignore petitioner's evidence, namely, Secretary's Certificate dated February 5, 2020[13] and Letter dated January 24, 2020 from MUFG Bank, Ltd.[14] (both were issued more than a year after the fact of service of the FAN), Securities and Exchange Commission (SEC) Certificate of Filing and Amended Articles of Incorporation dated November 28, 2017 with attached Articles of Incorporation,[15] and Certificate of Registration (BIR Form No. 2303)[16] which all indicate that the registered address of petitioner is still at the 28th Floor Tower 2, The Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas Avenue, Makati City. Notably, the said registered address was never denied or questioned by respondent in both its *Answer*[17] and *Memorandum.*[18]

Accordingly, considering that the deficiency tax assessment in this case was found to be issued in violation of petitioner's right to due process of law, the same is void, thus, bears no valid fruit.[19] The same could not have also attained finality, or is it the proper subject of respondents' power to collect. Significantly, a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act.[20]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse or modify the Decision promulgated on March 1, 2024.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 01 March 2024) is hereby **DENIED** for lack of merit.

SO ORDERED.

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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13 Exhibit "P-1", Docket – Vol. I, p. 23.
14 Exhibit "P-18", Docket – Vol. I, p. 170.
15 Exhibit "P-2", Docket – Vol. I, pp. 98 to 104.
16 Exhibit "P-3", Docket – Vol. I, pp. 105 to 108.
17 Docket – Vol. I, pp. 252 to 264.
18 Docket – Vol. II, pp. 1103 to 1112.
19 *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, et seq.*, G.R. Nos 215534 and 215557, April 18, 2016.
20 *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201225-26 and 201132, April 18, 2018, citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 311 (2013)

We Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(ON LEAVE)

CORAZON G. FERRER-FLORES
Associate Justice