REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORIENTAL ASSURANCE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8817

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
SEP 14 2017 2:40 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This addresses respondent's **Motion for Reconsideration**, filed through registered mail on March 14, 2017 and received by the Court on March 22, 2017, with petitioner's **Comment (To the Respondent's Motion for Reconsideration)**, filed through registered mail on May 5, 2017 and received by the Court on May 22, 2017; and respondent's **Supplement to the Argument in the Last Paragraph of the Motion for Reconsideration**, filed on May 10, 2017, without petitioner's comment despite due notice as per Records Verification dated July 4, 2017.

Respondent seeks reconsideration of this Court's Decision dated February 23, 2017, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, this Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand and Warrant of Garnishment issued against petitioner are declared **NULL** and **VOID**."

In assailing the said Decision, respondent anchors his arguments on the following grounds:

1. The assailed Decision appeared to have tried a case different from that derived from the petition and the answer. It is even totally alien to the stipulation of issues that was adopted by the Court and meant to govern the trial proceedings. This is both unjust and unfair.

2. Assuming that this case may be framed as a disputed assessment case even if the assessment was never protested and actually acknowledged several times by the taxpayer – a refusal to enter into a compromise agreement is not covered by "other matters" to justify the Honorable Court's exercise of jurisdiction.

3. Assuming this case is a disputed assessment case and further assuming that a refusal to enter into a compromise agreement is indeed covered by "other matters" – the Honorable Court has no jurisdiction as the Warrant of Garnishment here is not a decision that is appealable to the CTA.

4. On all the previous assumptions as well as further assuming that the Warrant of Garnishment is an appealable decision – the collateral attack and nullification herein of a final, executory and demandable assessment is highly irregular bordering on illegal.

Respondent contends that the reliefs prayed for by petitioner were confined only to the (1) nullification of the Notice of Denial and Warrant of Garnishment, (2) declaration of petitioner's payment on June 8, 2012 pursuant to the compromise agreement as valid and reasonable, and (3) prohibition for the collection of the deficient documentary stamp tax due by respondent that was subject of the Warrant of Garnishment. Respondent claims that petitioner singularly prayed for the approval of its compromise offer.

Respondent alleges that the stipulated issue of whether doubtful validity of the assessment exists in this case is in reference with and in contemplation of the provision of Section 204 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent explains that the validity of the assessment was never an issue. Allegedly, petitioner did not ask for the nullification of the assessment because it did not dispute the assessment by filing a protest, instead, it acknowledged the liability. Respondent points out that petitioner even paid a portion of the deficiency tax.

Respondent also states that even if this case may be considered as a disputed assessment despite the fact that the said assessment was never protested and was actually acknowledged by petitioner, a refusal to enter into a compromise agreement is not covered by "other matters" to justify the Court's exercise of jurisdiction. Respondent maintains that this Court has no jurisdiction because the Warrant of Garnishment is not a decision appealable to this Court. As such, respondent further stands that the nullification of an undisputed, acknowledged and partially paid assessment based on a collateral attack is highly irregular.

In his *Supplement to the Argument in the Last Paragraph of the Motion for Reconsideration*, respondent argues that the Final Assessment Notice (FAN) issued fourteen days from the date of receipt of the Preliminary Assessment Notice (PAN) cannot *ipso facto* result in the invalidity of the assessment. Respondent points out that the cited jurisprudential authority, *i.e.* the ruling in the case of *Commissioner of Internal Revenue vs. Metro star Superama, Inc.*, is not applicable to this case. Allegedly, the issue involved in the *Metro star case* is the implication of the factual absence of the PAN.

Petitioner opposes the instant motion on the ground that this Court has jurisdiction over this case. Petitioner insists that the denial of request for compromise settlement falls under other matters as contemplated by the law which vests the Court jurisdiction over this case; and that the Warrant of Garnishment is deemed a decision appealable to this Court.

According to petitioner, it has stated in the Petition for Review that the Formal Letter of Demand (FLD) was issued merely fourteen (14) days after its receipt of the PAN.

After a careful evaluation of the foregoing arguments, the Court finds that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

The Court does not deviate from the issues stipulated by the parties. One of the issues set forth in this case is whether there is legal basis for petitioner's assertion regarding the doubtful validity of the assessment that would warrant the approval of the compromise.

It is worthy to reiterate that this Court has applied by analogy the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Azucena T. Reyes*[1], stating that a void assessment cannot be used as a basis for the perfection of a tax compromise, to wit:

> "Under the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. Being invalid**, the assessment cannot in turn be used as a basis for the perfection of a tax compromise.**
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> xxx xxx xxx
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> **It would be premature for this Court to declare that the compromise on the estate tax liability has been perfected and consummated, considering the earlier determination that the assessment against the estate was void.** Nothing has been settled or finalized. Under Section 204(A) of the Tax Code, where the basic tax involved exceeds one million pesos or the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the NEB composed of the petitioner and four deputy commissioners." (*Emphasis supplied*)

Accordingly, it is imperative to determine whether the assessment is valid or not to be considered a subject for compromise agreement.

[1] G.R. Nos. 159694 & 163581, January 27, 2006.

Section 228 of the NIRC of 1997, as amended, provides:

"SEC. 228. **Protesting of Assessment**. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings." (*Emphasis supplied*)

Corollary hereto is Section 3.1.2 of Revenue Regulation (RR) No. 12-99 which states:

"3.1.2 Preliminary Assessment Notice (PAN) – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**" (*Emphasis supplied*)

Based on the foregoing provisions, petitioner has fifteen days within which to respond to the PAN. Assessment notice issued within the said fifteen-day period would violate taxpayer's right to due process.

As discussed in the assailed Decision, the FLD was issued fourteen days after petitioner received the PAN, which was within the fifteen-day period mandated by law within which to protest the PAN. Such issuance of the FLD without awaiting the lapse of the fifteen-day period violates petitioner's right to due process. Thus, the FAN is void and did not attained finality.

An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[2]

As regards respondent's argument that the ruling enunciated in in the *Metro Star case*[3] is not applicable to the instant petition, the Court finds the same lack of merit.

The Supreme Court ruled in *Metro Star case*[4] that failure of the Commissioner of Internal Revenue to strictly comply with the requirements laid down by law and by his own rules is a denial of taxpayer's right to due process, *viz*:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by**

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[2] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.

[3] G.R. No. 185371, December 8, 2010.

[4] *Ibid.*

> **law and its own rules is a denial of Metro Star's right to due process.** Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void." (*Emphasis supplied*)

It is noteworthy that respondent failed to strictly comply with his own rules, RR No. 12-99, by issuing the FLD within the above-mentioned fifteen day period.

Considering the foregoing, there is no cogent reason to disturb the assailed Decision.

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

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice