REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MASAGANA MANAGEMENT SERVICES, CORPORATION,
Petitioner,

CTA Case No. **10071**

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE and **BIR REGIONAL DIRECTOR, REGION 7, QUEZON CITY,**
Respondents.

Promulgated:
FEB 07 2022 2:02 PM

x--x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Masagana Management Services, Corporation's (**petitioner**'s) "Motion for Reconsideration (Re: Decision promulgated on 28 May 2021)"[1] (**MR**) filed on 17 June 2021[2], without respondents Commissioner of Internal Revenue and BIR Regional Director, Region 7, Quezon City's (**respondents'**) comment.[3]

Petitioner's MR seeks the reversal of this Court's Decision[4] (**assailed Decision**) promulgated on 28 May 2021. The dispositive portion of the assailed Decision reads:

[1] Division Docket, pp. 359-366.
[2] Received by the Court on 18 June 2021.
[3] *Per* Records Verification dated 04 October 2021.
[4] Division Docket, pp. 344-358.

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed by petitioner Masagana Management Services, Corporation dated 12 April 2019 is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**
>
> ...

In its MR, petitioner argues that respondent did not duly serve the Final Decision on Disputed Assessment[5] (**FDDA**) upon petitioner as what was served is only the Final Notice Before Seizure[6] (**FNBS**). According to petitioner, the said FNBS was signed by Marivic G. Tulio, Assistant Chief of the Collection Division of Revenue Region No. 7 – Quezon City (**RR 7**). Thus, petitioner contends that its motion for reconsideration (**MR**) of the FDDA was addressed appropriately to the Regional Director of RR 7.

In the same MR, petitioner reiterates that its non-receipt of the subject Letter of Authority (**LOA**) and the Preliminary Assessment Notice (**PAN**) rendered the assessment null and void from the beginning.

Petitioner also maintains that there was no admission from it or its witness, Jennylene A. De Leon (**De Leon**) that its property manager, Leah Hebres (**Hebres**), received the LOA and the PAN and got hold of them at the time of the audit. Petitioner adds that it was only after respondent filed his Answer[7] that petitioner found out that the LOA and the PAN were allegedly received by its room attendant Rene E. Eduque (**Eduque**) and receptionist Ma. Florida A. Banada (**Banada**), respectively.

Petitioner further adds that this Court has ruled that the law, regulation and jurisprudence require the service of the PAN to the taxpayer, or at least, to its agent and not upon any other person, citing the case of *Dionisia D. Pacquiao v. Hon. Thelma S. Milabao OIC, Regional Director Bureau of Internal Revenue Region No. 18.*[8] Accordingly, its room attendant (Eduque) and receptionist (Banada)

---

[5] Exhibit "P-8", id., pp. 270-273.
[6] Exhibit "P-7", id., p. 269.
[7] Id., pp. 106-109.
[8] CTA Case No. 9039, 30 May 2017.

cannot be considered as its agents or duly authorized representatives. Thus, the LOA and the PAN were served in violation of the law and relevant regulations which rendered the assessment null and void.

Lastly, petitioner claims that a void assessment bears no fruit and cannot attain finality.

We resolve.

After a careful review of the records and petitioner's arguments, this Court finds no cogent reason to abandon its assailed Decision and grant petitioner's MR.

At the outset, petitioner failed to raise any new matter which this Court has not yet considered or passed upon. Nonetheless, for emphasis, this Court shall briefly discuss and reiterate its reasons for the dismissal of petitioner's Petition for Review.

It is undisputed that petitioner addressed its MR on the FDDA issued by Regional Director Marina C. De Guzman (**RD De Guzman**), respondent's duly authorized representative, to RD De Guzman again and *not* with respondent CIR.

Revenue Regulation (**RR**) No. 12-99[9], as amended by RR 18-2013[10] is quite clear in stating the proper remedy in case the protest is denied, as follows:

> ...
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the

---

9 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

10 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> Commissioner's duly authorized representative shall be entertained by the Commissioner."[11]
>
> ...

This was further clarified in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[12] (**PAGCOR**) where the Supreme Court laid down the following guidelines, to wit:

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> 1. If the protest is wholly or partially denied by the CIR **or** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> **2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.**
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA**. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.[13]
>
> ...

Since petitioner did neither of the aforementioned available remedies, the assessments consequently became final, executory and demandable. From the foregoing alone, it is clear that this Court no longer has jurisdiction to review the subject FDDA.

---

[11] Emphasis supplied.

[12] G.R. No. 208731, 27 January 2016.

[13] Citation omitted, emphasis, italics and underscoring in the original text, and supplied.

As to petitioner's insistence that there was no admission on its part that its property manager, Hebres, received the LOA and PAN, the records of the case would reveal otherwise.

To reiterate for emphasis, quoted herein are the pertinent portions of the Judicial Affidavit[14] of its lone witness, De Leon, which constituted judicial admissions:

> ...
>
> **Q14. Did the manager of the property located in Santolan, Pasig City, reported to your office that she had received a Letter of Authority?**
>
> A: No.
>
> ...
>
> **Q18. In the instant case, did the manager of the property located in Santolan, Pasig City reported to your office that she had received a Preliminary Assessment Notice?**
>
> A: No, she did not.
>
> ...

In *Commissioner of Internal Revenue v. Manila Electric Company (***MERALCO***)*[15], the Supreme Court held that a judicial admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made, *viz*:

> ...
>
> ... A judicial admission binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it. In *Camitan v. Fidelity Investment Corporation*, we sustained the judicial admission of petitioner's counsel for failure to prove the existence of palpable mistake, thus:
>
> > x x x. A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, ***which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made.***

---

[14] Division Docket, p. 129; Emphasis in the original text.

[15] G.R. No. 181459, 09 June 2014; Citations omitted, emphasis and italics in the original text.

> x x x x
>
> Upon examination of the said exhibits on record, it appears that the alleged discrepancies are more imagined than real. Had these purported discrepancies been that evident during the preliminary conference, it would have been easy for petitioners' counsel to object to the authenticity of the owner's duplicate copy of the TCT presented by Fidelity. ***As shown in the transcript of the proceedings, there was ample opportunity for petitioners' counsel to examine the document, retract his admission, and point out the alleged discrepancies. But he chose not to contest the document. Thus, it cannot be said that the admission of the petitioners' counsel was made through palpable mistake.***

...

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision promulgated on 28 May 2021) filed on 17 June 2021 is hereby **DENIED** for lack of merit. Accordingly, the Court's Decision dated 28 May 2021 is **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

LANEE S. CUI-DAVID
Associate Justice