REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

D.M. WENCESLAO & ASSOCIATES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9764

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

SEP 15 2023; 1:15PM

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Reconsideration** filed via accredited courier on June 1, 2023, with petitioner's **Comment (Re: Motion for Reconsideration dated May 30, 2023)** filed on July 4, 2023.

Respondent seeks the Court to reverse and set aside the Court's Decision dated May 9, 2023[1] (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review filed on February 9, 2018 by petitioner D.M. Wenceslao & Associates, Inc. is **GRANTED**. Accordingly, the Final Decision dated January 10, 2018 and the Formal Assessment Notice dated January 14, 2013 are **CANCELLED** and **SET ASIDE** for being void *ab initio*.
>
> The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed income tax, value-added

[1] CTA Docket, Vol. III, pp. 1812-1828.

> tax, expanded withholding tax, fringe benefits tax, improperly accumulated earnings tax, documentary stamp tax, and compromise penalty for taxable year 2009 in the aggregate amount of ₱308,835,204.52, inclusive of interest arising from the Formal Assessment Notice dated January 14, 2013 issued against petitioner D.M. Wenceslao & Associates, Inc. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.
>
> **SO ORDERED**."

Respondent submits that the Court erred in cancelling the Formal Assessment Notice (FAN) dated January 14, 2013 and Final Decision dated January 10, 2018 based on the following grounds: *(i)* petitioner's right to due process was not violated when respondent issued the FAN since it had the opportunity to file its Reply to the Preliminary Assessment Notice (PAN); and, *(ii)* taxes are the lifeblood of the government.

Petitioner, in its Comment, prays for the denial of respondent's motion as his contentions are devoid of any legal or factual bases. It further argues that respondent's motion failed to address the Court's conclusion that the hasty preparation and issuance of the FAN before the lapse of the fifteen (15)-day period to file its Reply to the PAN, violated petitioner's right to due process and consequently rendered the assessment void.

THE COURT'S RULING

Respondent's Motion for Reconsideration deserves scant consideration.

Respondent's argument that petitioner's right to due process was not violated was exhaustively addressed and rejected for being without merit in the assailed Decision dated May 9, 2023.

To reiterate, respondent issued the FAN[2] on January 14, 2013 or barely five (5) days after receipt by petitioner of the Preliminary Assessment Notice (PAN), without regard to the fifteen (15)-day period within which petitioner is allowed by law to respond to the PAN. Clearly, respondent violated petitioner's right to due process.

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[2] Exhibit "P-5", CTA Docket Vol. II, pp. 1093-1107; Exhibits "R-9" to "R-9-e", BIR Records, pp. 567-574.

Accordingly, the Court finds no cogent reason to modify, much more, to reverse the assailed Decision dated May 9, 2023.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

(No Part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice