REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

INTELLIGENT TOUCH CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10215

Members:

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

Promulgated:
JUL 23 2024
11:08 a.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before the Court are the following:

1) petitioner's **Motion for Partial Reconsideration (of the Decision dated 19 October 2023)** filed on December 15, 2023, without respondent's comment per Records Verification Report dated April 01, 2024; and,

2) respondent's **Motion for Partial Reconsideration** filed *via* accredited courier on December 19, 2023 and received by the Court on December 20, 2023, with petitioner's **Comment (on the Respondent's Motion for Partial Reconsideration dated December 2023**) filed on January 29, 2024.

On October 19, 2023, the Court promulgated a Decision cancelling respondent's deficiency income tax assessment against petitioner, while upholding the deficiency value-added tax ("VAT") assessment but with modification for taxable year 2011, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.
>
> The assessment issued by respondent against petitioner for taxable year 2011 covering the deficiency income tax is **CANCELLED and SET ASIDE**, while the assessment for deficiency VAT is **UPHELD**, but with modification.
>
> Accordingly, petitioner should be **ORDERED TO PAY** respondent the aggregate amount of **Php3,772,955.77**, representing deficiency value-added tax for the 3rd and 4th quarters of the taxable year 2011, the remaining unpaid interest computed until October 19, 2015, twenty-five percent (25%) surcharge imposed under Section 248 (A)(3) of the NIRC of 1997, as amended, twenty percent (20%) deficiency interest imposed under Section 249 (B) of the same Code, and twenty percent (20%) delinquency interest imposed under Section 249 (C) of the same Code, respectively, computed until December 31, 2017, as shown below:

Basic tax	Php1,137,131.40
Unpaid interest on 10.19.2015	849,940.12
Surcharge (25% x Php1,137,131.40)	284,282.85
Total amount due — October 19, 2015	**Php2,271,354.37**
20% Deficiency interest (10.20.2015 to 12.31.2017) [20% x Php1,137,131.40 x 804 days/365 days]	500,960.90
20% Delinquency interest (10.20.2015 to 12.31.2017) [20% x Php2,271,354.37 x (804/365)]	1,000,640.50
Total amount due — December 31, 2017	**Php3,772,955.77**

> In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes of **Php2,271,354.37** as of October 19, 2015, as determined above, or equivalent to the amount of **Php746.75** per day, computed from January 1, 2018 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion Law and as implemented by Revenue Regulations No. 21-2018.

On the other hand, since all of petitioner's payments made on October 19, 2015 in the amounts of Php161,613.06 and Php2,149,029.29 for deficiency income tax and deficiency VAT, respectively, have been deducted from the tax due in computing the deficiency tax liability, there is no excess left to be refunded.

SO ORDERED."

Undaunted, both parties implore the Court to take a second and hard look on the conclusions reached in the above Decision and prays that the same be partially reconsidered based on their respective Motions.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner prays that the Court partially reconsiders the Decision with respect to the deficiency VAT assessment for the 3rd and 4th quarters of taxable year 2011 by declaring the same as null and void. Petitioner raises the following grounds in support of its arguments, *viz.*:

1. A *Memorandum of Assignment* cannot take the place of a Letter of Authority ("LOA") and cannot be treated as a valid LOA.

2. The assessment is void due to the absence of a duly issued LOA and a Preliminary Assessment Notice ("PAN") duly received by petitioner.

   a. The issuance and receipt of an LOA is mandatory and the absence thereof renders any resulting assessment invalid.

   b. There was also no PAN validly served and received by the petitioner or its duly authorized officer/representative.

   c. Despite the allegation of constructive service of the LOA and PAN, the same was not properly done by the BIR.

3. Assuming arguendo that petitioner may be liable for deficiency VAT, the input tax allegedly carried over to the succeeding period in the amount of Php911,842.60 should still be considered in arriving at the VAT deficiency.

After due consideration, the Court finds petitioner's Motion for Partial Reconsideration bereft of merit.

Notably, the arguments raised by petitioner in its Motion are mere reiterations of matters, which have already been considered, weighed, and resolved by the Court in the Decision it assails.

As to the first ground, petitioner mainly argues that due to the absence of an LOA authorizing revenue officer ("RO") Armina Anwar to conduct the reinvestigation of petitioner's books of accounts for any possible deficiency taxes, the resulting Formal Letter of Demand/Final Assessment Notice ("FLD/FAN"), Final Decision on Disputed Assessment ("FDDA"), and respondent's Decision dated October 10, 2019 on petitioner's administrative appeal should all be considered null and, necessarily, be completely cancelled by the Court.

Again, the Court is not convinced.

It must be emphasized that Group Supervisor ("GS") Elizabeth C. Arias who was named in the LOA to examine or audit respondent's books of accounts and accounting records for taxable year 2011 was also included in the reinvestigation of petitioner's books of accounts for any possible deficiency taxes, which resulted to the issuance of the FDDA.

The Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[1] emphasized than an LOA's purpose is to prove the authority of the RO when he or she comes knocking at the taxpayer's door, to examine the latter's books of accounts to come up with an assessment. Since the same revenue officer, specifically GS Arias, had the continuing authority to review Petitioner's protest to the FLD/FAN, the danger or abuse sought to be avoided in the assessment (by not issuing a new LOA) is absent. Otherwise stated, there is valid authority on the part of GS Arias to recommend the issuance of the FDDA.

Also, in the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, et. al.*,[2] the Supreme Court had the opportunity to clarify the matter that the assessment itself differs from a decision on the disputed assessment. As such, the nullity of the FDDA does not necessarily render the assessment void. The Supreme Court ruled as follows:

> "The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The**

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1 G.R. No. 242670, May 10, 2021.
2 G.R. Nos. 215534 and 215557, April 18, 2016.

> **assessment remains valid notwithstanding the nullity of the FDDA because** as discussed above, **the assessment itself differs from a decision on the disputed assessment.**
>
> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, **it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents.** The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
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> x x x
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> To recapitulate, **a 'decision' differs from an 'assessment'** and failure of the FDDA to state the facts and law on which it is based **renders the decision void—but not necessarily the assessment.** Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided."[3]

Applying the foregoing case herein, assuming without conceding that the absence of an LOA authorizing RO Anwar to conduct the reinvestigation and examination of petitioner's accounting and financial records for any possible deficiency taxes has the effect of rendering the FDDA void, the FLD/FAN *per se* does not become null and void. It is only as if no decision was rendered by respondent. In other words, the deficiency assessments against petitioner may still be evaluated on the basis of the available evidence and documents proffered, as what was done in the present case.

With regard to petitioner's second argument, the Court maintains that the totality of evidence presented by both parties (*i.e.*, testimony of petitioner's witnesses, the non-receipt appears to be an afterthought, Bureau of Internal Revenue records, and petitioner's letter request for additional time) cast doubt on the veracity of petitioner's claim that it did not receive any LOA and PAN for deficiency taxes for taxable year 2011. Thus, the Court reiterates that petitioner failed to convince this Court that there was violation of due process of law.

Lastly, the Court also finds no viable reason to revisit the disallowance of the amount of Php911,842.60. Petitioner heavily relied on Court of Tax Appeals ("CTA") cases as lone basis for its argument. However, suffice it to say that CTA

[3] *Emphasis supplied.*

decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to the Supreme Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[4] Accordingly, petitioner's sole reliance on the decisions of this Court is clearly misplaced.

That having been settled, the Court shall now proceed to determine the merit of respondent's Motion for Partial Reconsideration.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent assails the above Decision praying that it be reconsidered based on the following grounds, *viz*:

1. The Court erred in ruling that the petitioner's deficiency income tax should be cancelled.

2. The Court erred in ruling that the petitioner's 1^{st} and 2^{nd} quarters VAT assessment for taxable year 2011 has already prescribed.

As to the first ground, respondent argues that the Court erred in cancelling the income tax assessment and a portion of the VAT assessment for taxable year 2011, considering that the said assessments already attained finality due to petitioner's failure to submit additional documents in support of its Request for Reinvestigation. Simply put, respondent asserts that petitioner is already barred from assailing his deficiency assessments.

Regarding the second ground, respondent contends that, assuming but without admitting, the VAT assessments for the 1^{st} and 2^{nd} quarters of taxable year 2011 have already prescribed, it is incumbent upon petitioner to specifically identify the transactions that fall under the months or quarters that have prescribed. Respondent submits that the burden to prove that there is an irregularity on the assessment still lies with the taxpayer who is contesting the assessment.

On the other hand, in its Comment, petitioner claims that respondent's interpretation of Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as implemented by Revenue Regulations ("RR") No. 18-2013[5] are

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[4] *Nippon Express (Philippines Corporation) v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.

[5] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

thoroughly misplaced. Petitioner submits that while it is true that non-submission of the documents in support of its request for reinvestigation within the 60-day period makes the assessment final, however, what is merely barred is to further dispute the correctness of the assessment and not the Request for Reinvestigation per se.

Petitioner likewise contends that the Court has already settled that the VAT assessment for 1st and 2nd quarters of taxable year 2011 is already beyond the scope of this case due to prescription. Petitioner further asserts that the Independent Certified Public Accountant ("ICPA") has already specified in its report the corresponding sales for the prescribed 1st and 2nd quarters of taxable year 2011. Lastly, petitioner submits that respondent's arguments in the present Motion are mere rehash of its previous arguments.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

Section 228 of the NIRC of 1997, as amended, lays down the guidelines in protesting an assessment, to wit:

> "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 pre-assessment notice shall not be required in the following cases:
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> x x x
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> 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.
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> 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.
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> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, <u>the assessment shall become final</u>.**

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> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable**."[6]

From the foregoing, a taxpayer has thirty (30) days from receipt of the assessment within which to file an administrative protest, and must submit within a period of sixty (60) days from the filing of the protest all relevant supporting documents. Failure of the taxpayer to submit the relevant supporting documents within the reglementary 60-day period would only render the assessment against it final, as opposed to not only being final but also executory and demandable.

Relative thereto, Section 3.1.4 of RR No. 18-2013 further provides that:

> "3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> x x x
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> For **requests for reinvestigation,** the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, **otherwise, the assessment shall become final.** The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, **the term 'the assessment shall become final' shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied**. x x x"[7]

[6] *Emphasis and underscoring supplied.*
[7] *Emphasis and underscoring supplied.*

Apparently, the taxpayer's failure to submit additional documents in support of its protest would only render the assessment final, in the sense that, the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence. Simply put, the failure to submit relevant supporting documents will not automatically result in the assessment becoming final, executory, and demandable.

Correspondingly, the immediate consequence of the failure to submit relevant supporting documents is that the protest will be denied and the issuance of the FDDA shall subsequently follow. The FDDA, nonetheless, may still be appealed to respondent by way of a request for reconsideration, or to this Court by way of a petition for review.

In the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*,[8] the Supreme Court rejected the Commissioner of Internal Revenue ("CIR")'s view that the assessment has become final and unappealable for failure of the taxpayer to submit relevant supporting documents. The High Court ruled that the CIR can only inform the taxpayer to submit additional documents but cannot demand what type of supporting documents should be submitted, thus:

> "Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
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> **We reject petitioner's view that the assessment has become final and unappealable.** It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
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> The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. **The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.**"[9]

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8 G.R. No. 172045-46, June 16, 2009.

9 *Emphasis and underscoring supplied.*

Applying the foregoing in the present case, petitioner's failure to submit additional documents in support of its request for reinvestigation did not automatically result in the assessment becoming final, executory, and demandable, hence, unappealable. It only resulted in the denial of its protest and the issuance of the FDDA.

With regard to respondent's argument that it is incumbent upon petitioner to specifically identify the transactions that fall under the quarters that have already prescribed, the same has already been meticulously addressed and discussed in the assailed Decision. To reiterate, respondent has the right to assess internal revenue taxes within three (3) years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later. Herein, the FAN issued on November 11, 2014 was issued beyond the period prescribed for the 1st and 2nd quarters of the taxable year 2011, *i.e.*, April 25 and July 25, 2014. As previously discussed in the Court's Decision, respondent himself acknowledged in his administrative Decision dated October 10, 2019,[10] that the right to assess petitioner's deficiency VAT for the first two quarters of 2011 has indeed prescribed, considering that the FAN/FLD was issued only on November 11, 2014.

Significantly, it is a hornbook doctrine that 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.[11] Thus, respondent's issuance of the FAN beyond the period prescribed for the 1st and 2nd quarters of the taxable year 2011 does not grant him the right to demand that petitioner specifically identify the transactions that fall under the months or quarters that have already prescribed. Notably, prescription deals with delay itself and thus is an issue of how much time has passed. The time period when prescription is deemed to have set in is fixed by law.[12] To reiterate, due to prescription, all items pertaining to the 1st and 2nd quarters should be excluded from the computation of petitioner's deficiency VAT liability.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the Decision promulgated on October 19, 2023.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (of the Decision dated 19 October 2023) and respondent' Motion for Partial Reconsideration are both **DENIED** for lack of merit.

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10 Docket, Exhibit "P-13", p. 172.

11 *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201225-26 and 201132, April 18, 2018, *citing Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 311 (2013)

12 *Spouses Roberto Aboitiz and Maria Cristina Cabarrus v. Spouses Peter L. Po and Victoria L.Po, G.R. Nos. 208450 and 208497,* June 05, 2017.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice