REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ANSI AGRICULTURAL PRODUCTS, INC,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8541

Members:

DEL ROSARIO, *Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUL 09 2015 ; 2:54 p.m.

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RESOLUTION

DEL ROSARIO, *P.J.*:

This resolves respondent's Motion for Partial Reconsideration (Notice of Decision promulgated on April 20, 2015) filed on May 11, 2015, with petitioner's Comment/Opposition filed on June 9, 2015.

In assailing the Decision, respondent ascribes to the Court the alleged error in holding that the partial settlement of prior debt through the offsetting of petitioner's receivable and payable accounts with that of Swift Foods, Inc. produced no taxable income.

Respondent argues that Revenue Audit Memorandum Order (RAMO) No. 1-2000, which is the basis in considering the payments made to petitioner by Swift Foods, Inc. as taxable income, is a valid issuance, and the assessment made in accordance therewith is therefore valid. Allegedly, the payment received by petitioner from Swift Foods, Inc. in the form of dressed chicken amounting to P2,310,495.50 is income, and that when such dressed chicken were eventually sold, the proceeds thereof are wealth that flows into petitioner and the income derived therefrom is taxable.

In its Comment on/or Opposition to respondent's Motion for Partial Reconsideration, petitioner asserts that the motion is *pro forma* as it failed to comply with the provisions of Rule 15 of the Rules of the Court of Tax

Appeals for it lacks a notice of hearing; thus, the assailed Decision stays as if no motion for reconsideration was filed and the same had long become final and executory.

Petitioner also argues that the grounds relied upon by respondent is bereft of merit. It maintains that there is no unreported income because there is no new money coming into the company as the sale on credit to Swift Foods, Inc. was already reported, the income derived therefrom was already declared and the tax was already paid. The partial payment of Swift Foods, Inc. in the form of dressed chicken worth P2,310,495.50, which was accepted by petitioner, brought down its uncollectible account to P2,866,862.00.

Petitioner further avers that the issue raised by respondent about *undeclared other income* had already been taken up and fully determined by the Court, and that no new argument was presented by respondent to warrant the reversal or modification of the assailed Decision.

Anent the procedural infirmity posed by petitioner, the provisions of Sections 4 and 5, Rule 15 of the Rules of Court are instructive, to wit:

> "Sec. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant.**
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> Sec. 5. Notice of hearing. – **The notice of hearing** shall be addressed to all parties concerned, and **shall specify the time and date of the hearing** which must not be later than ten (10) days after the filing of the motion." *(Boldfacing supplied)*

The notice requirement under Sections 4 and 5 of the Rules of Court is an integral component of procedural due process. The purpose of the requirement, *which was established not for the benefit of the movant but rather for the adverse party*, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.[1]

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[1] Cabrera vs. Ng, G.R. No. 201601, March 12, 2014.

The requirements of the aforesaid provisions of the Rules of Court are mandatory and that failure to comply therewith is fatal to movant's cause.[2] Nonetheless, when the adverse party had the opportunity to be heard and had filed pleadings in opposition to the motion, there is substantial compliance with the requirements of due process as highlighted in *Cabrera vs. Ng,*[3] *viz.*:

> "Likewise, in Jehan Shipping Corporation v. National Food Authority, the Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The Court held:
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>> This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
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>> As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.
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>> The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. x x x"

A perusal of the records reveals that this Court directed the petitioner to file comment, within ten (10) days from notice, on respondent's Motion for Partial Reconsideration in a Resolution promulgated on May 20, 2015.[4] Petitioner filed its Comment on/or Opposition to respondent's Motion for Partial Reconsideration on June 9, 2015.[5] In its 8-page Comment, petitioner not only pointed out the flaw in the Motion for violation of the notice requirement but also raised arguments against the merits thereof. As respondent was able to file her comment on the motion, the purpose of the

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[2] Tan v. Court of Appeals, G.R. No. 130314, September 22, 1998.
[3] Supra.
[4] Docket, p. 613.
[5] Docket, pp. 615-623.

notice requirement had already been served and, therefore, there is substantial compliance with the requirements of due process.

With respect to the substance of the motion, the Court finds the same bereft of merit.

It is to be stressed that respondent **assessed** the alleged "undeclared other income" of P2,310,495.50 **due to offsetting of accounts** made by petitioner as shown in the details of discrepancy of the Formal Letter of Demand, *viz.*:

> "b. Undeclared other income (**P2,310,495.50**) - Verification disclosed that the **said amount represents payable to Swift Foods, Inc. which was unilaterally declared to be condoned and offsetted against its receivable from the said company**. Such amount should have been reported as part of taxable income, hence, was added back pursuant to Sections 31 and 32 of the NIRC of 1997, as amended and Revenue Audit Memorandum Order (RAMO) 1-2000." *(Boldfacing supplied)*

The parties even jointly stipulated on the issue of whether the payable amount to Swift Foods, Inc. (which was <u>unilaterally declared condoned and offsetted</u> against petitioner's receivable from the same company) should have been reported as part of taxable income.[6]

On the other hand, in support of her position that offsetting of accounts produced taxable income, respondent is now asserting that the payment received by petitioner from Swift Foods, Inc. in the form of dressed chicken is income, and that when such dressed chicken were eventually sold, the income derived therefrom is taxable.

The Court already made an extensive discussion on the issue of offsetting of accounts, and sees no reason to modify or reverse the assailed Decision. As previously ruled, offsetting of petitioner's receivable account from Swift Foods, Inc. with its own payable account to the same debtor-creditor, as a consequence of the partial settlement of the latter's prior debt, will not produce any taxable income as there was no gain realized therefrom. There was no flow of wealth at the time the offsetting of accounts was made, or even at the time petitioner received payment in kind. The related income of the offset receivable account of P2,310,495.50 was already recognized at the time of sale on credit to Swift Foods, Inc. in the year 2004.

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[6] Docket, p. 223.

The additional point raised by respondent pertaining to the taxability of the supposed income on the subsequent sale of the dressed chicken is immaterial to the present controversy. As earlier emphasized, the factual basis of the assessed deficiency income tax on "undeclared other income" was due to petitioner's offsetting of accounts. Respondent cannot be allowed to change the theory or the factual basis of her assessment as this would be offensive to the basic tenets of justice and due process.

WHEREFORE, premises considered, the Motion for Partial Reconsideration (Notice of Decision promulgated on April 20, 2015) of respondent Commissioner of Internal Revenue is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice