REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *Third Division*

**BASES CONVERSION AND DEVELOPMENT AUTHORITY,**
*Petitioner,*

*-versus-*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8473**

Members:
***Bautista,** Chairperson*
***Fabon-Victorino,** and*
***Ringpis-Liban,** JJ.*

Promulgated:
OCT 14 2015
1:02 p.m.

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# *RESOLUTION*

***BAUTISTA, J.***

For resolution is respondent's "Motion for Reconsideration"[1] filed by registered mail on July 16, 2015; with petitioner's "Comment (On BIR's Motion for Reconsideration)"[2] filed on August 14, 2015.

On July 3, 2015, the Court promulgated a Decision[3], the dispositive portion thereof states:

> **WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **GRANTED.** Respondent is hereby **ORDERED** to (*i*) **CANCEL** the Formal Assessment Notices (Part I and II) and the Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111- E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 all dated August 22, 2011 representing petitioner's alleged deficiency Expanded Withholding Tax, Documentary Stamp Tax, and alleged failure to file and pay internal revenue taxes

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[1] *Records, CTA Case No. 8473*, pp. 1615-1621.
[2] *Id.*, pp. 1625-1629.
[3] *Id.*, pp. 1593-1614.

at the time or times required by law, in the amounts of PhP5,566,953.65, PhP1,673,426.93 and PhP50,000.00 (including penalties and surcharges from February 2, 2011 to September 26, 2011), respectively; (*ii*) **RETURN** to petitioner the amounts of PhP4,052,125.00 and PhP1,215,645.00 representing its payment under protest on September 4, 2012 for basic deficiency Expanded Withholding Tax and Documentary Stamp Tax; and (*iii*) **ISSUE** the corresponding Certificates Authorizing Registration for the sale of properties.

**SO ORDERED.**

*Respondent's Arguments*

Respondent alleges that the evidence presented established that payments were not made under protest; that the Court should have limited its Decision dated July 3, 2015 to petitioner's prayer, *i.e.*, the cancellation of the FANs and the issuance of the Certificate Authorizing Registration ("CAR"); and that the Court lost jurisdiction when petitioner voluntarily and unilaterally made payments of its deficiency taxes.

*Petitioner's Counter-Arguments*

Petitioner avers that the payment was made under protest, as shown by the evidence presented; and that the issue of payment has been raised by the parties in their Joint Stipulation of Facts and Issues and the Pre-Trial Order. Therefore it is an issue that the Court must consider.

From the foregoing arguments, the issues are as follows:

1. Whether the Court can resolve an issue that was not raised in the Petition for Review but was raised in the Pre-Trial Order; and

2. Whether petitioner's voluntary and unilateral payment affects the Court's jurisdiction; and

3. Whether petitioner paid under protest.

Anent the first issue, relevant is *Section 7, Rule 18 of the Rules of Court*, which states:

> Section 7. Record of pre-trial. — The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall, explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice. (Emphasis ours)

In the case of *Licomcen, Inc., v. Engr. Salvador Abainza, doing business under the name and style "Ads Industrial Equipment"*[4], the Supreme Court held that parties are bound by the delimitations they provided in the Pre-trial, as they have agreed thereto, to wit:

> Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case. The parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.

In the present case, in the Pre-Trial Order[5] dated November 13, 2012, one of the issues agreed upon by the parties was "whether or not [petitioner] is entitled to a refund for the payment it made under

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[4] G.R. No. L-199781, February 18, 2013, 691 SCRA 158, citing the case of *Villanueva v. Court of Appeals*.

[5] *Records*, p. 198.

protest on September 4, 2012 of Php5,267,770.00, representing the basic tax for EWT and DST," thus, the Court may pass upon the same.

Anent the second issue, relevant is *Section 7 of Republic Act No. 9282,*[6] which provides:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

In the present case, the Court has jurisdiction on the matter as the issues involved are as follows: "a. Whether or not petitioner is liable to pay EWT and DST on the sale of its Real Properties located at Fort Bonifacio, Bonifacio Global City; and b. Whether or not petitioner is entitled to refund for the payment it made under protest on September 4, 2012 of Php5,267,770.00, representing basic tax for the EWT and the DST."[7]

Clearly, the foregoing issues are within the Court's jurisdiction.

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[6] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as amended, otherwise Known as the Law Creating the Court of Tax Appeals, and For other purposes. March 30, 2004.
[7] *Records*, Pre-Trial Order dated November 13, 2012, p. 198.

Finally, anent the third issue, the Court found that payment was made under protest through Mr. Aquino's testimony.[8] The pertinent portion thereof is hereby reproduced, to wit:

MR. AQUINO

Your Honors, in the payment form it is clearly stated that payment under protest...

JUSTICE BAUTISTA

It is shown in the form?

MR. AQUINO

Yes, Your Honors, in the BIR form 0605.[9]

Therefore, the Court finds no reversible error in its Decision dated July 3, 2015.

**WHEREFORE**, the "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

[8] *Transcript Stenographic Notes* dated December 3, 2012.
[9] *Records, Exhibit* "S," p. 420.