REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZENITH FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9165

Members:

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

Promulgated:
JAN 07 2021 8:30 AM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent's "Motion for Reconsideration (Re: Decision promulgated 29 July 2020)" (**MR**), filed on 24 August 2020, with petitioner's "Comment/Opposition (Re: Motion for Reconsideration dated August 11, 2020)", filed on 28 September 2020.

In his motion, respondent raised the following grounds in his bid to have the said Decision reversed, to wit:

I.
THE HONORABLE COURT ERRED IN RULING THAT IT HAS JURISDICTION OVER THE INSTANT CASE.

II.
THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENT ISSUED BY RESPONDENT IS VOID.

III.
THE HONORABLE COURT ERRED IN RULING THAT THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE ISSUED IS VOID.

IV.
THE HONORABLE COURT ERRED IN RULING THAT PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT PAID.

In support of the above-enumerated grounds, respondent puts forward the following arguments:

First, the Court erred in assuming jurisdiction over the instant case. Respondent insists that petitioner's payment of the alleged deficiency taxes operates as an abandonment of its claim and an admission of its tax liabilities. Petitioner is thus estopped from questioning the assessment.

Second, the assessment against petitioner for withholding taxes has not prescribed. Respondent contends that Section 203[1] of the NIRC, as amended, provides for the period of limitation to conduct assessment for all internal revenue taxes, and does not extend to the assessment of penalties on the withholding agent for its failure to remit to the government the proper amount of tax withheld. He posits that withholding tax is not an internal revenue tax but only a system used to collect income tax in advance.

Third, the Formal Letter of Demand (**FLD**)/Final Assessment Notice (**FAN**) is valid. Respondent claims to have been deprived of procedural and substantive due process when the Court ruled that the FLD/FAN is void for failing to provide a definite amount demanded of petitioner. He submits that such issue was never raised and was not an assigned error. Moreover, the assessment is valid as long as it states the fact, the law, the rules and regulations or jurisprudence on which it

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[1] **Sec. 203.** *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period...

was based, and it remains to be valid irrespective of any additional requirement purportedly being prescribed by a regulation.

Lastly, the Court erred in ruling that petitioner is entitled to the refund of the taxes paid. Respondent believes that petitioner's payment is considered the full settlement of the alleged deficiency taxes, notwithstanding that the said payment was made "under protest". Thus, the paid deficiency assessments was not illegally or erroneously collected by respondent.

In refutation, petitioner points out that respondent's arguments were already raised in his Answer, Supplemental Answer and Memorandum which were reviewed and considered by the Court in its assailed Decision.

Nonetheless, petitioner reiterates that its payment was solely for the purpose of avoiding dis-accreditation as an importer by the Bureau of Internal Revenue (**BIR**). Based on the factual circumstances surrounding the payment, petitioner avows that it would be absurd to consider such payment as abandonment or waiver of the petition for cancellation or withdrawal of assessment for deficiency taxes for calendar year (**CY**) 2004.

As regards the validity of the assessment, petitioner echoes the decision of the Court that the period to assess deficiency expanded withholding tax (**EWT**), final withholding tax (**FWT**) and fringe benefit tax (**FBT**) for CY 2004 has already prescribed.

Moreover, petitioner contends that respondent's right to due process was not violated when the Court invalidated the FLD/FAN in the Decision. Petitioner stresses that respondent had every opportunity to provide an explanation or clarifications in relation to the imposed interest and the total amount due from petitioner, however it failed to do so.

Thus, considering respondent's violations in the assessment and collection of deficiency taxes, petitioner is entitled to the refund of the taxes it paid.

We resolve.

After a careful review of the records and parties' contrasting arguments, We find the instant motion bereft of merit.

At the outset, We find that respondent's first, second and fourth grounds raised in his MR are mere rehash of his previous contentions that were squarely addressed and passed upon in the assailed Decision. We do not find any cogent reason to deviate from our ruling. Likewise, We deem it unnecessary to belabor on the same.

Respondent assails Our finding that the FLD/FAN is void for failure to state a definite amount as the same was not raised as an issue. The said ruling is allegedly in violation of his right to substantive and procedural due process.

We disagree.

It is unequivocally provided in the last paragraph of Section 1 of Rule 14 of the Revised Rules of the CTA (**RRCTA**) that the Court may not limit itself to the issues stipulated by the parties but may also rule upon related isssues necessary to achieve an orderly disposition of the case. Such power to rule on related issues was acknowledged by the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[2], to wit:

> ...
> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* – xxx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule

[2] G.R. No. 183408, 12 July 2017.

> upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.
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> ...

It bears stressing that the ruling on the validity of the FLD/FAN is pivotal in determining whether petitioner is liable for the assessed amount, which ultimately would be the basis for petitioner's entitlement to refund. The validity of the assessment, while not specifically stipulated by the parties, is actually encompassed in the question of whether or not petitioner is liable to the assessed deficiency taxes[3]. For how can petitioner be liable for deficiency taxes when the FLD/FAN, which consititutes as the assessment, is void.

Respondent likewise argues that it was clearly stated in the FLD/FAN that the interest and the total amount due will have to be adjusted if paid beyond due date. Petitioner was reminded that although the basic tax liabilities including surcharge and interest has already been fixed and set in the FLD, an additional interest will have to be imposed against petitioner if it pays the deficiency assessment beyond 08 August 2008.[4]

Respondent is mistaken.

The interest computed in the FLD/FAN was only up to <u>10 July 2008</u>, while the deadline for payment indicated was <u>08 August 2008</u>. Undeniably, there was a gap period of twenty-eight (28) days *before* the set deadline wherein no interest was computed. Hence, it could hardly be considered that the interest was fixed and set in the FLD, as respondent so claims. We emphasize that the interest that will accrue

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3 One of the stipulated issues is "Whether petitioner is liable to the assessed deficiency expanded withholding tax (EWT), final withholding tax (FWT), Fringe Benefit Tax (FBT), and Compromise Penalties for Taxable Year 2004, Plus 25% Surcharge, 20% Deficiency and Delinquency Interest Pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code".

4 Page 9, respondent's Motion for Reconsideration.

in case petitioner pays beyond the deadline is neither the issue nor the basis for invalidating the FLD/FAN.

In the same vein, respondent's contention that the assessment remains valid as long as it contains the facts and laws on which it was based is of no moment. An assessment "refers to the determination of amounts due from a person obligated to make payments". A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer.[5] Therefore, a proper assessment should contain a definite amount of tax due and the corresponding demand for payment.

At any rate, even if We are to disregard Our disquisition that the FLD/FAN is void, the outcome will remain unchanged as the period to assess petitioner has already prescribed. As quoted in the Decision, the Supreme Court has ruled in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[6], that withholding taxes falls within the ambit of Section 203 of the NIRC, as amended. Thus, absent any circumstance that would warrant the application of the ten-year period to assess under Section 222[7] of the NIRC, as amended, the regular three-year period will apply. In this case, the assessment was issued after the lapse of the three-year period.

From the foregoing, We affirm that petitioner is entitled to the refund or issuance of tax credit certificate (**TCC**) of the taxes it paid relating to the assessment for EWT, FWT and FBT for CY 2004.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 29 July 2020) is **DENIED** for lack of merit.

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5 *Commissioner of Internal Revenue v. Fitness by Design, Inc., G.R. No. 215957*, 09 November 2016.

6 G.R. No. 211289, 14 January 2019.

7 **Sec. 222**. *Exceptions as to the Period of Limitation of Assessment and Collection of Taxes.*

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a preceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission...

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon...

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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