REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FILAIRCO, INC., doing business under the name and style TRANE PHILIPPINES,
Petitioner,

- versus -

COMMISSIONER INTERNAL REVENUE,
Respondent.

CTA Case No. 10862

Members:

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

Promulgated:

MAR 10 2023 1:00 P.M.

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RESOLUTION

This resolves petitioner's Motion for Judgment on the Pleadings on November 10, 2022, with respondent's Comment/Opposition thereto, filed through registered mail on January 16, 2023, followed by petitioner's Reply (Comment/Opposition Dated 16 January 2023), filed on February 6, 2023.

Petitioner argues that respondent's Answer[1] admitted its receipt of the Bureau of Internal Revenue (BIR)'s Preliminary Assessment Notice (PAN) on January 10, 2017, and the issuance of the Final Assessment Notice (FAN) on January 13, 2017. Counting fifteen (15) days from its receipt of the PAN on January 10, 2017, petitioner had until January 25, 2017 to file a reply or response thereon. Thus, the BIR's issuance of the FAN on January 13, 2017, or

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1 Petitioner invokes paragraphs 6 and 7, respondent's Answer.

three (3) days from its receipt of the PAN violates its right to due process on assessment under Section 228 of the National Internal Revenue Code of 1997, as amended (NIRC, as amended).

Petitioner further asserts that the BIR's right to collect the assessed taxes under said FAN is barred by prescription. Specifically, respondent also admits[2] in his Answer that the it received the FAN on January 27, 2017. Counting three (3) years therefrom, the BIR had until January 27, 2020 to collect the assessed taxes therein. There being no collection measure implemented by respondent as of January 27, 2020, the BIR forfeited its right to collect the taxes embodied in the FAN dated January 13, 2017.

In view thereof, petitioner moves that judgment on the pleadings be rendered and accordingly cancel the deficiency tax assessments embodied in the FAN dated January 13, 2017, the Final Decisions on Disputed Assessment (FDDA) dated April 7, 2017 and January 26, 2018, Final Demand Before Suit dated March 8, 2021, and Decision dated March 31, 2022.

On the other hand, respondent counters that the FDDA dated January 13, 2018 attained finality for failure to lodge a valid appeal before him or the Court of Tax Appeals (CTA), within thirty (30) days from receipt thereof. Being so, the CTA lacks jurisdiction to entertain this case. In addition, its right to collect the assessed taxes under the FAN dated January 13, 2017 is *not* barred by prescription.

In refuting respondent's counter-arguments, petitioner claims that: *one*, the Court has jurisdiction over this case; *two*, respondent's final assessment is void for violating its right to due process on assessment; *three*, respondent's right to collect the assessed taxes is barred by prescription; and *four*, judgment on the pleadings in this case is proper.

OUR RULING

The Motion is impressed with merit.

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[2] Petitioner invokes paragraph 43, respondent's Answer.

First, the jurisdictional matter posed by respondent.

In his Answer, respondent alleged that the FDDA dated January 13, 2018 attained finality, for petitioner's failure to appeal with the CTA, within thirty (30) days from receipt thereof. According to him, this needs to be addressed through the parties' presentation of evidence in a full-blown trial.

We differ.

In *Malabanan v. Republic of the Philippines*,[3] the Supreme Court debunked the very defense posed by respondent, ratiocinating in this wise:

> The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred. **Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.**

Pertinently, Section 7(a)(1) of Republic Act (RA) No. 1125,[4] as amended by RA No. 9282 states that the CTA has jurisdiction over respondent's decisions over disputed assessment:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
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> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;[5]

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3 G.R. No. 201821, September 19, 2018.
4 An Act Creating the Court of Tax Appeals.
5 Boldfacing supplied.

For the decision of respondent or his duly authorized representative to be raised on appeal before the Court in Division, there must first be a disputed assessment.[6] To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended which states:

> Section 228. *Protesting of Assessment.* — ...
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> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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.
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> ...

As alleged in its Petition for Review, the BIR's FAN was received by petitioner on January 27, 2017.[7] Counting thirty (30) days therefrom, it had until February 27, 2017[8] to file an administrative protest thereon; thus, its protest to the FAN was timely filed through registered mail on February 27, 2017.[9] On April 21, 2017, petitioner received a letter dated April 7, 2017 from the BIR Regional Director (RD), informing it that the tax assessments had become final, executory and demandable, which it treated as the latter's FDDA.[10] Counting another thirty (30) days from April 21, 2017, petitioner had until May 22, 2017[11] to file an administrative appeal with respondent; hence, petitioner seasonably appealed with respondent on May 22, 2017.[12] On April 19, 2022, petitioner received respondent's Decision dated March 31, 2022, stating that it was the latter's final decision on

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6 Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals (RRCTA) clarified that the Court in Division has jurisdiction over respondent's decision over disputed assessments, among others. See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.

7 Par. 7, Petition for Review dated May 18, 2022. Docket, p. 8.

8 The 30th day for petitioner to file an administrative protest, *i.e.*, February 26, 2017, fell on a Sunday.

9 Par. 9, Petition for Review dated May 18, 2022. Docket, p. 8.

10 Par. 10, Petition for Review dated May 18, 2022. *Ibid.*

11 The 30th day for petitioner to file the administrative appeal, *i.e.*, May 21, 2017, fell on a Sunday.

12 Par. 12, Petition for Review dated May 18, 2022. Docket, p. 9.

the matter.[13] Counting thirty (30) days from April 19, 2022, petitioner had until May 19, 2022 to seek judicial recourse; precisely, its Petition for Review was timely filed on May 19, 2022,[14] vesting us with jurisdiction over CTA Case No. 10862.

We are cognizant of BIR RD's "Final Decision on Disputed Assessment" dated May 22, 2017, and received by petitioner on May 31, 2017.[15] Yet, treading over the tenor of the BIR RD's earlier letter dated April 7, 2017, and received by petitioner on April 21, 2017,[16] the latter may not be blamed from treating said earlier letter as the BIR RD's final decision on its administrative protest. To be precise, such earlier letter contained the following paragraph:

> Since you failed to file a valid administrative protest against our FAN within thirty (30) days from date of receipt thereof, **the assessment** is now **final, executory and demandable** pursuant to RR No. 12-99, as amended by RR No. 18-2013. Hence, **the entire docket your case will be forwarded to the Chief, Collection Division of this Region for enforcement of collection through summary remedies provided by law.**
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> ...[17]

Catena of cases[18] has consistently considered letters answering an administrative protest, containing a statement regarding resort to the legal remedies for the collection of taxes as being indicative of the final nature of the BIR's determination of a taxpayer's tax liability. Surely, the BIR RD's declaration that the tax assessments became final and executory, coupled with his indorsement for the collection of the assessed taxes, signifies a characterization of finality of the latter's action on petitioner's administrative protest. For that reason, petitioner challenged the BIR RD's letter it received on April 21, 2017 through an administrative appeal before respondent, filed on May 22, 2017, and rightfully so.

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13 Par. 19, Petition for Review dated May 18, 2022. Docket, p. 10.

14 Docket, p. 6.

15 Par. 13, Petition for Review dated May 18, 2022. Docket, p. 9.

16 *Supra* note 12.

17 Docket, p. 124. The existence of the Letter dated April 7, 2017 was admitted by respondent in par. 6 of his Answer. Same letter is found as an attachment on the Judicial Affidavit of respondent's witness Rodolfo E. Cabalona III, *id.* unpaged. Boldfacing supplied.

18 See *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148360, December 9, 2005; *Commissioner of Internal Revenue v. Union Shipping Corporation*, G.R. No. L-66160, May 21, 1990; and *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals, et al.*, G.R. No. L-2528, June 28, 1974.

Next, the merits.

Section 1, Rule 34 of the Rules of Court, as amended[19] states:

> **Section 1.** *Judgment on the pleadings.* — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may; on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.

Basbas v. Sayson[20] decreed that "[w]hen the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate."

Here, petitioner invokes, among others, paragraph 43 of respondent's Answer, which is hereby reproduced in *verbatim*:

> 43. Moreover, there was substantial compliance of due process when the **FAN dated 13 January 2017** was only received by petitioner on 27 January 2017 or seventeen (17) days from **its receipt of the PAN** dated 28 December 2016 **on 10 January 2017** and was able to file its Reply to PAN on 26 January 2017. Hence, petitioner actually had the opportunity to be heard when it filed the Reply to PAN.[21]

What we can refract therefrom are respondent's admissions on: *first*, the FAN's issuance on January 13, 2017; and *second*, petitioner's receipt of PAN dated December 28, 2016 on January 10, 2017. These admitted facts exhibit respondent's violation of petitioner's right to due process on assessment.

Section 228 of the NIRC, as amended, explicitly requires the valid service of the PAN, as well as an opportunity for the taxpayer

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19 A.M. No. 19-10-20-SC 2019.

20 G.R. No. 172660, August 24, 2011.

21 Page 9, respondent's Answer. Docket, unpaged. Boldfacing supplied.

to refute the findings therein be done by the BIR, prior to the issuance of a final assessment:

> **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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> ...
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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.
>
> **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.**[22]

Relevantly, Section 3.1.2 of Revenue Regulations (RR) No. 12-99,[23] as amended by RR No. 18-2013, grants the taxpayer a period of fifteen (15) days from receipt of the PAN to file a reply or response thereto.[24] The taxpayer would be considered in default, if it failed to file a reply or response to the PAN within said period. Only after

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22 Boldfacing supplied.

23 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

24 SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

...

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties (Boldfacing supplied).

receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.[25]

Petitioner received the PAN dated December 28, 2016 on January 10, 2017. Counting fifteen (15) days from January 10, 2017, petitioner had until January 25, 2017 to file a reply or response thereto. The BIR's issuance of the FAN on January 13, 2017, or barely three (3) days from petitioner's receipt of the PAN is offensive to its right to due process.

However, respondent is correct in claiming that a judgment on the pleadings is not proper on petitioner's claim that the government's right to collect the assessed taxes is barred by prescription simply because there is an existing issue on said matter—the BIR issued several RRs and Revenue Memorandum Circulars, allegedly suspending the prescriptive period to collect taxes.[26]

Therefore, the deficiency tax assessment under the FAN dated January 13, 2017 must be declared void *solely* on the ground that petitioner's right to due process on assessment was violated by respondent. To stress, "...the BIR's right to assess and collect taxes must conform to the requirements for assessment and collection set forth in the law. There can be no equivocation from this right and duty nexus."[27]

WHEREFORE, petitioner's Motion for Judgment on the Pleadings, filed on November 10, 2022, is **GRANTED**. Accordingly, Assessment Nos. IT-ELA78370-13-17-371, VAT-ELA78370-13-17-371, WE-ELA78370-13-17-371, WF-ELA78370-13-17-371, DS-ELA78370-13-17-371, IE-ELA78370-13-17-371 and MC- ELA78370-13-17-371, Formal Assessment Notice dated January 13, 2017, Final Decisions on Disputed Assessment dated April 7, 2017 and January 26, 2018, Final Demand Before Suit dated March 8, 2021, and Decision dated March 31, 2022, are **CANCELLED** and **SET ASIDE**.

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25 See *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.

26 See par. 49, respondent's Answer.

27 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

Respondent, his agents, or any persons acting in his behalf are **ENJOINED** from enforcing the collection of taxes under the above tax assessments against petitioner.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice