REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

UNISPHERE INTERNATIONAL, INC.,
Respondent.

CTA *EB* NO. 2121
(CTA Case No. 8782)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 23 2020 10:16 a.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) on August 30, 2019 through registered mail and received by this Court on September 6, 2019 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of the *Decision* dated January 21, 2019[3] and the *Resolution* dated July 25, 2019[4] promulgated by the Special Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8782 entitled "*Unisphere International, Inc. vs. Commissioner of Internal*

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[1] *Rollo*, CTA EB No. 2121, pp. 8-24.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, Annex A, pp. 29-45.
[4] *Id.*, Annex B, pp. 47-50.

Revenue", and the rendition instead of a new judgment finding respondent Unisphere International, Inc. (UII) liable for deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax in the aggregate amount of Php6, 127,243.07.

The dispositive portions of the assailed Decision and Resolution read:

Decision dated January 21, 2019:[5]

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Assessment No. 34-1-000219-94 dated March 5, 1998, and the Warrant of Distraint and/or Levy No. 11-1476-13, the Warrants of Garnishment, and the Notice of Tax Lien on TCT No. PT-100571 issued pursuant to the said assessment are all **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Resolution dated July 25, 2019:[6]

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated January 21, 2019)** is **DENIED** for lack of merit.
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> **SO ORDERED**."

The Facts

As culled from the records of this case, petitioner CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

On the other hand, respondent UII is a domestic corporation duly organized and existing under Philippine laws,

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, Decision dated January 21, 2019, p. 30.

with principal office at No. 213 C. Santos Street, Bo. Ugong, Pasig City.[8]

Petitioner CIR issued a Warrant of Distraint and/or Levy (WDL) against respondent's properties to collect its alleged delinquent tax liabilities for CY 1994 in the original amount of Php1,747,817.12.[9]

On October 21, 2003, Atty. Phydias Emmanuel R. Ramos, acting on behalf of respondent, filed a letter with petitioner and the BIR Collection and Enforcement Division (CED) explaining that the BIR cannot commence collection proceedings because no valid assessment has been issued against respondent UII. Hence, Atty. Ramos requested petitioner CIR to lift the WDL.[10]

On January 29, 2004, Ms. Teresita M. Angeles, the Chief of the CED, replied to Atty. Ramos' letter stating that an Assessment Notice had been issued under Assessment No. 34-1-000219-94 on March 5, 1998 following the proper tax audit and assessment procedure.[11]

On March 9, 2004, Atty. Ramos filed a letter requesting Ms. Angeles to furnish him with copies of all documents pertaining to the Assessment Notice that was mentioned in the CED's letter dated January 29, 2004 because respondent UII never received any document from the BIR in connection with the audit of its tax liabilities for CY 1994.[12]

On March 12, 2004, Ms. Angeles of the CED sent a letter explaining that the deficiency tax assessment was issued based on the "best evidence obtainable rule" because respondent UII allegedly failed to present the required books of account.[13]

On April 6, 2004, Atty. Ramos wrote to Ms. Angeles to advise her that the letter dated March 12, 2004 did not have

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[8] *Rollo*, Decision dated January 21, 2019, p. 29.
[9] *Id.* at 30.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

any attachments. Hence, he requested that the documents mentioned in the said letter be forwarded to his law office.[14]

On April 28, 2004, Atty. Ramos wrote another letter to Ms. Angeles to reiterate that respondent UII did not receive any Letter of Authority (LOA) authorizing specified Revenue Examiners to audit respondent UII's books for CY 1994.[15]

The BIR did not respond to Atty. Ramos' letters dated April 6, 2004 and April 28, 2004.[16]

On January 27, 2006 and April 5, 2006, the BIR caused the annotation of two (2) Notices of Tax Lien on the title of petitioner's property located in Pasig City covered by TCT No. PT-100571.[17]

On June 14, 2006, Mr. Carlos Ty, respondent's president, sent a letter to former BIR Commissioner Jose Mario C. Buñag to reiterate that respondent UII had not been served any LOA for CY 1994.[18]

On May 9, 2007, Mr. Edgardo S. Santos, the Revenue District Officer of RDO No. 34, issued a letter to respondent UII denying its request to review the CED's decision to issue the WDL and the Notice of Tax Lien.[19]

On August 27, 2008, respondent UII filed an application to compromise its alleged deficiency tax liabilities for CY 1994 on the ground of doubtful validity of the assessment, and paid the minimum compromise rate of ten percent (10%) of the basic tax, as per Section 204 of the Tax Code of 1977, as amended, detailed as follows:[20]

	BASIC TAX ASSESSED	**MINIMUM COMPROMISE RATE**	**COMPROMISE PAYMENT**
Income Tax	Php 880,910.95	Php 88,091.10	Php 88,091.10
EWT	2,240.50	224.05	2,240.50
Total	Php 883,151.45	Php 88,315.15	Php 90,331.60

[14] *Rollo,* Decision dated January 21, 2019, p. 30.
[15] *Id.* at 31.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*

On February 25, 2009, respondent UII paid an additional compromise payment of P264,273.28, thereby raising the total compromise payments to P354,604.88, or more than forty percent (40%) of the basic tax assessed for CY 1994.[21]

On March 11, 2011, Ms. Elvira R. Vera, the Assistant Commissioner for Collection Service, issued a letter denying respondent UII's application/offer for compromise settlement.[22]

On June 8, 2011, respondent UII, through its new counsel Atty. Rommel V. Oliva, wrote to Ms. Vera requesting that the tax lien on its property covered by TCT No. PT-100571 be lifted in view of the fact that the BIR lost its right to assess and collect deficiency taxes from it for CY 1994.[23]

On June 22, 2011, Mr. Enrique C. Pinos, the Assistant Revenue District Officer of RDO No. 43-B, issued a letter addressed to Atty. Oliva stating that the latter's letter dated June 6, 2011 filed on June 9, 2011 has been endorsed to the Chief of the Legal Division of Revenue Region (RR) No. 7.[24]

On April 20, 2012, Atty. Amado Rey B. Pagarigan, the Chief of the Legal Division of RR No. 7, prepared a memorandum addressed to the Director of RR No.7 recommending the cancellation of Assessment No. 34-1-000-219-94 dated March 5, 1998 and the lifting of the tax lien over the property covered by TCT No. PT-100571.[25]

On January 17, 2013, Atty. Angel Pasion, the head of the Appellate Division of the BIR, issued a memorandum stating that, after reviewing the arguments raised by respondent UII, it is his recommendation that the latter's request to lift the WDL and cancel the tax lien be denied.[26]

On September 9, 2013, Atty. John Paul Ganaloan, a Technical Assistant at the Office of the Deputy Commissioner for the Legal and Inspection Group, likewise reviewed the arguments interposed by respondent UII and issued a

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[21] *Rollo*, Decision dated January 21, 2019, p. 31.
[22] *Id.* at 32.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*

memorandum recommending the denial of respondent's request to lift the WDL and cancel the tax lien.[27]

On November 18, 2013, petitioner CIR issued Warrants of Garnishment (WOGs) to ten (10) different banks seeking to enforce the collection of respondent's alleged deficiency income tax and expanded withholding tax for CY 1994 in the amount of Php6,127,243.07. Respondent UII was served with copies of the WOGs on February 6, 2014.[28]

Hence, respondent UII filed a Petition for Review (with Urgent Motion to Suspend Collection of Taxes and to Quash/Lift Warrant of Distraint and/or Levy, Warrants of Garnishment and Notice of Tax Lien) on March 10, 2014.[29]

Then trial ensued. After the trial of the instant case, the Court in Division ruled in favor of respondent UII by granting its petition and cancelling the Assessment No. 34-1-000219-94 dated March 5, 1998, and the Warrant of Distraint and/or Levy No. 11-1476-13, the Warrants of Garnishment and the Notice of Tax Lien on TCT No. PT-100571 issued pursuant to the said assessment.[30]

On September 3, 2019, petitioner CIR filed the instant Petition for Review after this Court granted[31] his Motion for Extension of Time to File Petition for Review[32].

On September 26, 2019, respondent UII was directed to submit its comment in the instant petition. Respondent moved[33] for an extension of time to file said comment which the Court granted[34] on October 17, 2019.

On October 28, 2019, respondent UII submitted its comment[35] on the instant petition. Thus, on December 26, 2019, the case was declared[36] deemed submitted for decision.

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[27] *Rollo*, Decision dated January 21, 2019, p. 32.
[28] *Id.*
[29] *Id.* at 33.
[30] *Id*, Dispositive portion of Decision dated January 21, 2019, p. 32
[31] *Id.*, Minute Resolution dated August 15, 2019, p. 4.
[32] *Id.* at pp. 1-3.
[33] *Id.*, Motion for Extension of Time [To File Comment], pp. 101-103.
[34] Minute Resolution dated October 17, 2019.
[35] *Rollo*, Comment/Opposition [To Petition for Review dated 30 August 2019], pp. 109-119.
[36] *Id.*, Resolution dated December 26, 2019, pp. 126-127.

The Issue

The sole issue that will be resolved is:

> Whether the Court in Division erred in granting respondent's Petition for Review, and in cancelling and setting aside the assessment notices, WDL, WOG and Notice of Tax Lien.[37]

Arguments of Petitioner[38]

Petitioner CIR argues that respondent was validly served with the assessment notice as respondent failed to notify the former of the latter's change of address.

Petitioner also argues that respondent is estopped from questioning the validity of the subject assessment because of the latter's offer of compromise.

Argument of Respondent[39]

Respondent UII argues that it was not validly served with the Final Assessment Notice and that it is not estopped from questioning the validity of the subject assessment.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
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> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx

[37] *Rollo*, Petition for Review, p. 19.
[38] *Supra.*, Note 1.
[39] *Supra.*, Note 35.

> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated July 25, 2019. The latter was allegedly received by petitioner CIR on July 31, 2019. In accordance with the abovementioned provisions of the RRCTA, petitioner CIR had until August 15, 2019 within which to file its petition.

However, petitioner filed a Motion for Extension of Time to File Petition for Review on August 14, 2019 requesting for an additional fifteen (15) days or until August 30, 2019 within which to file said petition which this Court granted.[40] Thus, the filing of the instant Petition for Review on August 30, 2019 was on time.

Petitioner CIR argues that respondent UII failed to inform or notify the former of the latter's change of address. However, the factual findings by the Court in Division show otherwise, to wit:

> "The pieces of evidence of both parties show that before the alleged mailing of the FAN on March 5, 1998, respondent already knew that petitioner's new address is at 213 C. Santos St., Bo. Ugong, Pasig as reflected in the following correspondence:
>
> > 1. Letters of Authority dated **September 18, 1995** and **February 5, 1996** as presented by respondent;
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> > 2. Second and Final Request for Presentation of Books of Accounts and Other Relevant Records dated **January 29, 1996** sent to petitioner by respondent; and

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[40] *Rollo*, Minute Resolution dated August 15, 2019, p. 4.

> 3. Notice of Informal Conference dated **August 8, 1996** sent to petitioner by respondent.
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> Hence, despite the absence of a formal written notice of petitioner's change of address, the fact remains that respondent became aware of petitioner's new address as shown by several documents in its records.
>
> xxx xxx xxx
>
> Respondent (Now, petitioner) failed to present evidence to prove that petitioner actually received the FAN. There is nothing in the records which would show that the FAN was received by petitioner in accordance with law and pertinent jurisprudence."

The abovementioned factual findings reveal that petitioner CIR was already aware of respondent UII's new address at 213 C. Santos St., Bo. Ugong, Pasig prior to the mailing of the FAN and yet said notice was mailed at 1885 Pres. Quirino Ave., Paco, Manila, which is not respondent's address at that time. Hence, there is no valid service of the FAN.

As cited in the assailed Decision, the Supreme Court ruled in the case of *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[41] that prior knowledge of petitioner of the taxpayer's new address requires no further notification from the latter.

Petitioner must be aware that factual findings of the Court in Division which conducted the trial is binding and conclusive on this Court, absence of any clear showing of abuse, arbitrariness, or capriciousness on its part, as it was the one which directly observed and appreciated the evidence adduced by the parties during the trial of the case. As held in *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Syquia Mendoza, et al.*[42], to wit:

> "Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court

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[41] G.R. No. 198677, November 26, 2014.
[42] G.R. No. 209132, June 05, 2017.

> was in a much better position to determine which party was able to present evidence with greater weight."

The reason for such is the observance of the doctrine of the Hierarchy of Courts as held in *Crisanto M. Aala, et al. v. Hon. Rey T. Uy, et al.*[43], to wit:

> "There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections*, "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner." Thus:
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> > Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals."

Petitioner also argues that respondent was already estopped from questioning the validity of the assessment because of the latter's offer of compromise.

Said argument is merely a reiteration or rehash of the earlier disquisition on the issue that was exhaustively addressed already by the Court in Division in its assailed Resolution and it will be useless for this Court to reiterate the

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[43] G.R. No. 202781, January 10, 2017. *un*

same as held in *Madeleine Mendoza-Ong v. Hon. Sandiganbayan, et al.*[44], to wit:

> "Concerning the first ground abovecited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself."

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed *Decision* dated January 21, 2019[45] and *Resolution* dated July 25, 2019[46] are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen SL

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[44] G.R. Nos. 146368-69, October 18, 2004.
[45] *Supra*, Note 3.
[46] *Supra*, Note 4.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice