REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MEGACONSTRUCT GROUP, INC.,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9992

Members:

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

Promulgated:

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision promulgated on 2 December 2021)** filed through registered mail on January 22, 2022, and received by the Court on February 15, 2022, with petitioner's **Comments** filed through registered mail on March 18, 2022, and received by the Court on March 29, 2022.

On December 2, 2021, the Court promulgated a Decision cancelling respondent's deficiency income tax assessment and compromise penalty against petitioner for being issued in violation of the latter's right to due process of law, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject income tax assessment, including the imposed compromise penalty, for taxable year 2014, in the aggregate amount of

₱2,947,550.37 are declared as **INVALID**, and therefore, is **CANCELLED** and **SET ASIDE**.

Moreover, the PCL dated October 23, 2018 and FNBS dated November 14, 2018 issued against petitioner are likewise **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In its Motion, respondent assails the above Decision and moves that it be reconsidered and set aside based on the following grounds, *viz.*:

I.

The Court has no jurisdiction over the instant petition as the assessment has already become final, executory and demandable;

II.

Assuming that this is not an undisputed assessment and further assuming that the Final Notice Before Seizure (FBNS) may be the subject of an appeal, still the Court has no jurisdiction over the instant petition for failure on the part of the petitioner to comply with the jurisdictional period to appeal as provided for in Section 11 of Republic Act (RA) No. 1125 as amended by Section 9 of RA No. 9282;

III.

While maintaining that the Court has jurisdiction over the instant petition, the Court erred in ruling that petitioner's transfer from Revenue District Office (RDO) No. 36 to RDO No. 25A has been validly made, insofar as the subject income tax assessment is concerned;

IV.

The Court erred in ruling that respondent failed to prove that the subject Preliminary Assessment Notice (PAN) and the Formal Letter of Demand with Final Assessment Notice (FLD/FAN) were received by petitioner, which rendered the subject income tax [*assessment*] void for violating petitioner's right to due process; *qr*

V.

The Court erred in ruling that the period to assess the subject deficiency income tax for taxable year 2014 has already prescribed; and,

VI.

The Court erred in ruling that the subject compromise penalty may not be validly imposed.

On the other hand, in its comment, petitioner primarily asserts that the matters raised by respondent in its Motion were already passed upon and resolved by the Court in the Decision it assails, hence, the present Motion is *pro forma*. Nonetheless, respondent maintains that the PAN was sent to its old office located in Palawan despite the notification it made to the Bureau of Internal Revenue (BIR) RDO of its new address in Malolos City, Bulacan. As a result thereof, the PAN was not received by the petitioner.

Petitioner submits that since it did not receive the said PAN, the subsequent assessment notices, FLD/FAN and FNBS, issued against it violated its right to due process of law.

The Court finds the respondent's Motion for Reconsideration bereft of merit. As correctly observed by petitioner, the arguments raised by respondent in its Motion are mere reiterations of matters, which have already been considered, weighed, and addressed by the Court in the Decision it assails.

The Court has jurisdiction to entertain the Petition for Review.

Respondent argues that the Court has no jurisdiction over the *Petition for Review* on the basis that (1) the assessment has become final, executory and demandable when petitioner failed to file a valid protest; and (2) assuming that the FNBS may be subject to appeal, petitioner failed to appeal as the jurisdictional period has long lapsed when the Petition was filed on December 21, 2018.

The Court does not agree. 9r

As discussed in the assailed Decision, respondent failed to sufficiently prove that petitioner indeed received the subject PAN and FLD/FAN in accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3.1 of Revenue Regulations (RR) No. 12-99,[1] as amended by RR No. 18-2013.[2] Such being the case, the said PAN and FLD/FAN are deemed void for violating petitioner's right to due process of law.

On the timeliness of the filing of the present *Petition for Review*, Section 9 of RA No. 9282,[3] amending RA No. 1125,[4] provides that a party may file an appeal with this Court within thirty (30) days from the receipt of the decision or ruling of the Commissioner of Internal Revenue, to wit:

> "Section 9. Section 11 of the same Act is hereby amended to read as follows:
>
> > 'SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein</u>**.
> >
> > **Appeal shall be made by filing a petition for review under a procedure**

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[1] 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.

[2] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[3] 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 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.

[4] AN ACT CREATING THE COURT OF TAX APPEALS.

> **analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA <u>within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon</u>**. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc. xxx.'" *(Emphasis and underscoring supplied)*

Based on the records of the case, petitioner received the Preliminary Collection Letter (PCL) on November 16, 2018. Subsequently, the FNBS was issued and received by petitioner on November 23, 2018.[5] Counting thirty (30) days from the receipt of the FNBS, the last day to file an appeal was on December 23, 2018. Clearly then, the filing of petitioner of the *Petition for Review* on December 21, 2018 was timely filed.

Petitioner validly notified RDO No. 36 of its transfer to RDO No. 25A.

Respondent again argues that petitioner's transfer from RDO No. 36 to RDO No. 25A has not been validly made, insofar as the subject income tax assessment is concerned. Respondent claims that under RR No. 7-2012,[6] a Certification of Registration (COR) is necessary in order to completely transfer petitioner's business registration to another RDO.

The Court finds respondent's argument misplaced. Jc

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[5] Exhibit "P-8", Docket, p. 215; Exhibit "R-10",Docket, p. 81.

[6] SUBJECT: Amended Consolidated Revenue Regulations On Primary Registration, Updates, And Cancellation, April 2, 2012.

Perusal of the case records reveal that petitioner filed on August 3, 2011 a letter with RDO No. 36,[7] informing respondent of its change of address from 42 Manga Ave., Poblacion, Narra, Palawan, to Lot 4 Block 8 King Philip St. Royale Estates Subd., Bulihan, Malolos City, Bulacan. Thereafter, on October 23, 2012, petitioner filed another letter dated August 15, 2012 with the same RDO,[8] submitting the Memorandum dated July 30, 2012 issued by revenue officer Marita P. Panteriori of RDO 25A, Plaridel, Bulacan, recommending the approval of the transfer of registration of petitioner to Bulacan. Furthermore, petitioner even sent the letter dated June 16, 2017 addressed to OIC-Revenue District Officer Vicente P. Gamad of RDO 36,[9] requesting that all letters to petitioner in relation to the Letter of Authority (LOA) be addressed and delivered to its office address at Bulacan.

From the foregoing, respondent was clearly notified of petitioner's change of address, prompting that all communications from respondent to petitioner, including the subject PAN and FAN, should have been sent or mailed to the latter's address in Bulacan.

More so, it is also worthy to point out that RR No. 7-2012 was not yet issued when petitioner filed its Notice of Change of Address with respondent, as the said RR was issued on a much later date, April 2, 2012. Accordingly, said RR is not applicable in petitioner's case but rather RR No. 12-85,[10] which requires that the taxpayer must only give a written notice to the RDO having jurisdiction over the taxpayer's former legal residence and/or place of business. Hence, the letter filed on August 3, 2011 by petitioner sufficiently and validly notified BIR RDO No. 36 of its change of address from Palawan to Bulacan.

Respondent failed to prove that petitioner received the PAN and FLD/FAN.

Respondent assails the Court's ruling that respondent failed to prove that the PAN and FLD/FAN were received by petitioner thereby

[7] Exhibit "P-3", Docket, p. 208; Exhibit "P-2" (Q&A No. 1), p. 205; Transcript of Stenographic Notes (TSN) at the hearing held on October 7, 2019, pp. 12 to 14.
[8] Exhibit "P-5", Docket, pp. 209 to 210; TSN at the hearing held on October 7, 2019, pp. 12 to 14.
[9] Exhibit "P-6", Docket, p. 211.
[10] SUBJECT: Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue, November 27, 1985.

rendering the subject income tax assessment void for violating petitioner's right to due process of law. Respondent asserts that (1) petitioner failed to raise the issue of receipt of the PAN, thus, it is no longer a disputable issues; (2) petitioner is estopped from denying the receipt of the FLD/FAN as it admitted it received documents corresponding to the assessment, which were sent to the Palawan address; and (3) the *onus probandi* has already shifted to petitioner with the presentation of independent pieces of evidence to prove receipt by petitioner of the subject mail matter.

The Court finds respondent's assertions unmeritorious.

Again, the Court stresses that it is empowered to rule on related issues necessary to achieve an orderly disposition of the case. In fact, this matter was already settled by the Supreme Court in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[11] as follows:

> "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.* —
>
> x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but **may also rule 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

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

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." *(Emphasis added)*

The Supreme Court clearly affirmed this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case. Truly, this Court is authorized to resolve the issue on the receipt of the PAN, even if not raised in the *Petition for Review*.

On the application of estoppel, jurisprudence provides that the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.[12]

It bears stressing that pursuant to Section 228 of the NIRC of 1997, as amended, petitioner's right to due process requires that it must be informed in writing of the facts and law on which the assessment was based; otherwise, the assessment is void. Hence, respondent cannot invoke estoppel in the present case as the law positively requires that it must prove that the FLD/FAN was actually received by petitioner.

As for the burden of proof, while admittedly, there is a presumption that a letter duly directed and mailed is received in the regular course of the mail,[13] such presumption however is a disputable one. When the taxpayer denies receipt of the notice, burden shifts to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee, as explained by the Supreme Court in the case of *Republic of the Philippines v. The Court of Appeals, et al.,*[14] to wit:

"We do not agree with petitioner's above contentions. As correctly observed by the respondent ge

[12] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[13] Section 3(v), Rule 131 of the Rules of Court.
[14] G.R. No. L-38540, April 30, 1987.

> court in its appealed decision, while the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still this is merely a disputable presumption, **subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.**" *(Emphasis supplied)*

In relation thereto, the Supreme Court further held in the case of *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue,*[15] that it is a requirement of due process that the taxpayer must actually receive the assessment to be valid, to wit:

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer actually receive said notice within the five-year period. It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**."
>> (*Emphasis added*) gr

[15] G.R. No. 155541, January 27, 2004.

In view of the aforequoted cases, it is incumbent upon the respondent to prove that the assessment notices were actually received by the taxpayer. Unfortunately, as found by the Court, respondent failed to overcome the burden to prove the actual receipt of petitioner of the FLD/FAN, as it only presented evidence on the fact of mailing. Such being the case, due process was not accorded to petitioner in the issuance of the subject PAN and FLD/FAN, in so doing, rendering the subject assessment notices void.

The ten (10) year period to assess on account of false return does not apply in this case.

Respondent reiterates that the period to assess the subject deficiency income tax for taxable year 2014 has not yet prescribed, as the ten (10) year period to assess on account of false return applies due to the alleged substantial understatement in the income tax return of the petitioner.

However, the Court is not convinced.

Verily, Section 222(a) of the NIRC of 1997, as amended, provides an exception to the three (3) year prescriptive period, thereby extending the period to assess to ten (10) years from the discovery of the falsity, fraud or omission. Simply put, ten-year prescriptive period applies in cases of (1) false or fraudulent return with intent to evade tax or (2) failure to file a return, to wit:

> "SEC. 222. *Exceptions as to 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 proceeding 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**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." *(Emphases added)* 9r

In relation thereto, Section 248(B) of the NIRC of 1997, as amended, states that:

> "SEC. 248. *Civil Penalties.* – x x x.
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or **in case a false or fraudulent return is willfully made**, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* That **a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return**: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein." *(Emphases supplied)*

Based on the afore-cited provisions, where there is a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions exceeding thirty percent (30%) of that declared per return, the same shall constitute *prima facie* evidence of a false or fraudulent return. Further, by willfully filing a false or fraudulent return, a penalty of fifty percent (50%) on the tax or deficiency tax shall be imposed.

Perforce, in the case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.,*[16] the Supreme Court clarified that for a return to be considered false, there must be an intent to evade the taxes due, to wit:

> "Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was

[16] G.R. No. 213943, March 22, 2017.

> intentional and done with intent to evade the taxes due, **the filing of a false return can be intentional or due to honest mistake**. In *CIR v. B.F. Goodrich Phils.*, Inc., the Court stated that the **entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return**. xxx." *(Emphases added)*

Herein, respondent presented no evidence to prove fraud or intentional falsity or that petitioner filed the return with the intent to evade the taxes due. For that reason, the said return does not constitute as a false return.

Also, worth noting is that it is only in the present Motion that respondent raised the defense of ten (10) year prescriptive period. It consistently maintains in its previous pleadings[17] that the subject assessment was issued within the three (3) year prescriptive period under Section 203 of the NIRC of 1997, as amended. In fact, nowhere was it even mentioned in the subject PAN dated May 27, 2018 and FLD/FAN dated April 13, 2018 that petitioner was being assessed under the ten year prescriptive period, which therefore leads to the assumption that the issue of ten (10) year prescriptive period is merely an afterthought.

The subject compromise penalty may not be validly imposed.

Lastly, respondent claims the Court erred in ruling that the subject compromise penalty may not be validly imposed, as it was able to establish that petitioner had substantial underdeclaration of taxable income; and, it is within respondent's discretion to impose a compromise penalty against petitioner for failure to supply correct information in its return.

To reiterate in the assailed Decision, a compromise is, by its nature, mutual in essence.[18] It implies agreement. One party cannot impose it upon the other. Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the

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[17] See *Answer*, Docket, pp. 49 to 55; *Respondent's Pre-Trial Brief*, Docket, pp. 69 to 75; and *Respondent's Memorandum*, Docket, pp. 342 to 349.

[18] See *Dr. Felisa L. Vda. De San Agustin, et al. v. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

suggested amount. Considering that there is no indication that petitioner consented to the subject compromise penalty, the same may not be validly imposed.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in its Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on December 2, 2021.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated on 2 December 2021) is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice