REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNIVERSITY OF THE PHILIPPINES SYSTEM ADMIN,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1946
(CTA Case No. 8397)

Present:

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

Promulgated:
JUN 2 8 2021 4:10 pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner University of the Philippines System Admin's (**petitioner-movant**'s/**UPSA**'s) "Motion for Reconsideration (Re: Decision dated 18 November 2020)"[1] (**MR**), filed on 11 December 2020, without comment from respondent Commissioner of Internal Revenue (**respondent/CIR**) *per* Records Verification Report[2] dated 16 February 2021.

[1] Rollo, pp. 195-223.
[2] Id., p. 227.

Petitioner-movant's MR is anchored on the following grounds:

I.
THE HONORABLE COURT ERRED IN CONCLUDING THAT: 1) PETITIONER-MOVANT RECEIVED THE FINAL ASSESSMENT NOTICE (FAN)/FORMAL LETTER OF DEMAND (FLD) PRIOR TO 11 NOVEMBER 2010; 2) PETITIONER-MOVANT'S RIGHT TO DUE PROCESS WAS NOT VIOLATED; and, 3) THERE WAS NO VALID PROTEST FILED.

II.
THE HONORABLE COURT ERRED IN CONCLUDING THAT PETITIONER-MOVANT FAILED TO PROVE THAT THE ASSESSED PORTION PERTAIN TO THE PRESCRIBED PERIOD.

III.
PETITIONER-MOVANT'S RENTAL INCOME ARE EXEMPT FROM VALUE-ADDED TAX (VAT) UNDER ARTICLE XIV, SECTION 4, PARAGRAPH 3 OF THE CONSTITUTION.

In support of the above, petitioner-movant is insistent that the Court erred in concluding that it actually received the Final Assessment Notice (**FAN**)/Formal Letter of Demand (**FLD**) prior to 11 November 2010 and in consequently ruling that there was no valid protest filed. It maintains that in its communication with respondent, it never mentioned that it received the FAN/FLD. Its correspondence only expressed its intention to protest thereto. Thus, it devolves upon respondent to prove the mode of service of the FAN/FLD and the date he allegedly did so.

Furthermore, petitioner-movant claims it was deprived of due process when respondent issued the FAN/FLD ten (10) days from its receipt of the Preliminary Assessment Notice (**PAN**). According to it, it should have been given the full fifteen (15) days within which to respond to the PAN before respondent can issue the FAN/FLD. It is only in cases of default of the taxpayer that can respondent issue the FAN/FLD.

Anent the filing of a valid protest, petitioner-movant posits that while the 10 December 2010 letter was short and appeared to be a mere transmittal, it nevertheless contained an explanation of the factual basis of its protest hence, it should be considered to have timely filed a valid protest to the FAN/FLD.

The Court's finding that respondent's right to assess petitioner-movant for value-added tax (**VAT**) and expanded withholding tax (**EWT**) for the fourth quarter of 2006 has not yet prescribed is likewise being challenged. Petitioner-movant posits that at the time it received the FAN/FLD on 11 November 2010, the assessment for VAT and EWT for 2006 have already prescribed. The correct reckoning point of the three-year prescriptive period is from the time of its *receipt* of the FAN/FLD, rather than the time of issuance.

Moreover, petitioner-movant contends that the entire assessment is incorrect and should be set aside because respondent made assessments for the whole year, with the first three (3) quarters already prescribed. With an erroneous basis for assessment, it could only be expected that the assessment would result to a wrong conclusion as to the amount and covered period.

Petitioner-movant explains that its rental income are exempt from VAT as the same is used actually, directly and exclusively used for educational purposes. It cites the recent Supreme Court ruling in *La Sallian Educational Innovators Foundation (De La Salle University College of St. Benilde) Inc. v. Commissioner of Internal Revenue*[3], where it was held that all revenues of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes are exempt from taxes. Also, the rental income from International Rice Research Institute (**IRRI**) is subject to 0% VAT pursuant to Section 108 (B)(3)[4] of the National Internal Revenue Code (**NIRC**), in relation to Article 5(1) of Presidential Decree No. 1620.[5]

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3 G.R. No. 202792, 27 February 2019.

4 **Sec. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

...

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate[.]

...

5 *Granting to the International Rice Research Institute (IRRI) The Status, Prerogatives, Privileges and Immunities of an International Organization*

...

Article 5. Taxation and Customs

1. The provisions of existing laws or ordinances to the contrary notwithstanding, the Institute, or its successors, shall be exempt from the payment of gift, franchise, specific, percentage, real property exchange, import, export, and all other taxes provided under existing laws or ordinances. This exemption shall extend to goods imported and owned by the Institute to be leased or used by members of its staff.

The Court En Banc resolves below.

After a careful review of petitioner-movant's contentions and the records of this case, We fail to find any reversible error in the assailed Decision that would warrant a departure from Our earlier findings. Likewise, petitioner-movant's arguments here are mere rehash of issues that were already passed upon in the assailed Decision.

Nonetheless, We will discuss anew only to emphasize the reasons why we are constrained to affirm our Decision.

First, petitioner-movant heavily hinges its case on its receipt of the FAN/FLD only on 11 November 2010, and counting thirty (30) days therefrom, it allegedly timely filed a protest thereto.

This claim is erroneous.

We find it inconceivable for petitioner-movant, who was in communication with respondent then, to have already articulated its intent to dispute the FAN/FLD when it also has claimed non-receipt thereof. It is noted that, even in its letter to respondent, none was said of the absence of FAN/FLD. It is settled that, taxpayers are only given thirty (30) days to dispute the assessment upon its receipt, otherwise the assessment will become final. Considering the repercussion of a belated protest, petitioner-movant could have easily informed respondent that it has not yet received the FAN/FLD to ensure that the thirty-day period has not yet commenced (instead of vaguely expressing its intention to file a protest without manifesting whether it has obtained the copy or not). Petitioner-movant already knew of the issuance of the assessment against it months prior to its alleged actual receipt in November 2010, yet it took no step to at least convey to respondent its non-receipt.

Moreso, We could hardly consider as valid protest petitioner-movant's letter dated 10 December 2010. We reproduce the relevant portion of the Decision below:

> ...
>
> ...It is noted that the actual reply (protest) and the attached supporting schedules are not found in the case records.

At any rate, if We are to deem the 10 December 2010 letter as petitioner's protest to the FAN/FLD, it must have stated the facts, applicable law, rules and regulations, or jurisprudence on which it has been based. Revenue Regulations (**RR**) No. 12-99 provides:

> ...
>
> 3.1.5. *Disputed Assessment.* – ...
>
> ...
>
> **The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*** If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
>
> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**[6]
>
> ...

With the above, this Court could not therefore consider the aforesaid letter as a valid protest to dispute the assessment that respondent issued against petitioner. Verily, absent proof that petitioner indeed timely filed the required protest to the FAN/FLD, We are constrained to rule that the assessment against it has already attained finality. It is noted that petitioner bears the burden of proving that it validly disputed the FAN/FLD.

...

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6 Emphasis supplied and italics in the original text.

Noteworthy is the fact that petitioner-movant did not formally offer as evidence the "10 December 2010 letter" with its supposed attachments. The Court took note and considered the letter because it was duly proffered as part of the Bureau of Internal Revenue (**BIR**) Records. If petitioner-movant firmly insists on the timeliness of its protest to the FAN/FLD on 10 December 2010, how could it miss to formally offer a piece of evidence so vital in disputing the assessment against it?

For failure of petitioner-movant to timely file a valid protest, the Court could only deem that the assessment against it for taxable year 2006 has already attained finality.

At this juncture, it is propitious to point out that it is imperative for petitioner-movant to elevate substantially plausible matters to warrant the reconsideration and reversal of the assailed Decision. In *Shangri-la International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[7], the Supreme Court opined:

> ...
>
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.
>
> ...

Lastly, We reiterate that petitioner cannot seek refuge from the exemption granted under Section 25 of Republic Act (**RA**) No. 9500[8] as the taxable year covered by the assessment (TY 2006) was prior to the

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7 G.R. No. 159938, 22 January 2007.

8 *An Act to Strengthen the University of the Philippines as the National University.*

enactment of the said law. We reproduce in part our ruling in the assailed Decision:

> ...
>
> Assuming *arguendo* that petitioner did file a valid protest to the FAN/FLD, it could still not claim exemption under Section 25 of RA 9500 for the assessment covering TY 2006. RA 9500 was signed into law only on 29 April 2008 and took effect fifteen (15) days after its publication in the Official Gazette or in any newspaper of general circulation in the Philippines.
>
> ...
>
> ...Regrettably, the Court cannot apply the exemption granted under RA 9500 as the law was not yet in existence at the time. It is a basic tenet that laws are to be applied prospectively, unless retroactive application was provided for.
>
> ...

WHEREFORE, with the foregoing premises, petitioner University of the Philippines System Admin's "Motion for Reconsideration (Re: Decision dated 18 November 2020)" is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(*Inhibited*)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(With due respect, I maintain my D.O. dated November 18, 2020)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice