REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

V.Y. DOMINGO JEWELLERS, INC., *Petitioner,*	**CTA EB No. 1170** (CTA Case No. 8335)
	Present:
- versus -	Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 03 2015 4:10 p.m.

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RESOLUTION

COTANGCO-MANALASTAS, J.:

For resolution is respondent's *Motion for Reconsideration (Re: Decision promulgated on 01 July 2015)*[1] filed on July 28, 2015 with petitioner's *Opposition [Re: Motion for Reconsideration dated 27 July 2015]*[2] filed on September 1, 2015.

Respondent moves for reconsideration of this Court's Decision, promulgated on July 1, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The *Resolutions* dated January 29, 2014 and April 23, 2014 of the First Division of the Court are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the First Division of the Court for

[1] *Rollo*, pp. 213-224.
[2] *Rollo*, pp. 241-270.

further proceedings to afford respondent full opportunity to present her evidence.

SO ORDERED."

Respondent argues that the First Division of the Court has no jurisdiction to entertain petitioner's petition for review. The nature of the petition for review dated September 16, 2011 was an appeal from the denial of petitioner's Motion for Reinvestigation of the Preliminary Assessment Notice (PAN), pursuant to Section 7(a)(1) of Republic Act No. 1125, as amended, as well as Sections 1 and 3(a)(1) of Rule 4 and Sections 2, 3(a) and 4 of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) and not on "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue". The invocation of "other matters" is merely a last ditch effort of petitioner to confer jurisdiction to the First Division of the Court.

Respondent further argues that it is neither the assessment nor the formal demand letter itself that is appealable to this Court. It is the decision of the Commissioner of Internal Revenue (CIR) on the disputed assessment that can be appealed to this Court. Pursuant to Section 228 of the National Internal Revenue Code (NIRC) and Section 3.1.5 of Revenue Regulations No. 12-99, the assessment which is the proper subject of protest or motion for reinvestigation is the Assessment Notice and Formal Letter of Demand and not the PAN.

Respondent stresses that the petition for review dated September 16, 2011 was anchored on its receipt of the Preliminary Collection Letter (PCL) issued by the Bureau of Internal Revenue (BIR), which petitioner treated as a denial of its Motion for Reinvestigation of the PAN. Petitioner cannot reasonably argue that it should not bear the consequences of its failure to file a protest or Motion for Reinvestigation on Assessment Notice No. 32-06-IT-0242, Assessment Notice No. 32-06-VT-0243, and Formal Letter of Demand dated September 9, 2010, due to its non-receipt of the said Assessment Notices and Formal Letter of Demand. Records show that on September 12, 2011, petitioner, through counsel, requested for certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 from the Collection Section of Revenue District No. 28, BIR, Quezon City.

However, instead of questioning the contents of the said assessment notices by filing a protest or motion for reinvestigation within 30 days from September 15, 2011, it opted to institute the instant petition for review on the basis of the PCL issued by the BIR, which petitioner treated as a denial of its Motion for Reinvestigation of the PAN.

Although there is a statement in the PCL that "[w]e will highly appreciate if you can give this matter your preferential attention, otherwise, we shall be constrained to enforce the collection thereof thru Administrative Summary Remedies provided for by the law, without further notice", still, the said letter cannot be considered as a denial of petitioner's Motion for Reinvestigation of the PAN and a final decision on disputed assessment considering that there is no statement that this is the final determination on the disputed assessment, no demand for payment was made and it does not refer to petitioner's Motion for Reinvestigation.

Anent the allegation that petitioner was denied due process when respondent failed to send the Notice of Final Assessment to it, respondent argues that the issue of due process was never raised by the petitioner in its petition for review.

In its opposition, petitioner stresses that respondent's motion for reconsideration is a mere rehash and repetition of her arguments which have already been exhaustively considered and taken up by the Court.

Petitioner emphasizes that the petition for review filed with the First Division also prays that the Waiver of the Statute of Limitations be declared void, which falls within the jurisdiction of the Court. The jurisdiction of the Court is not limited to the review of "decisions of the Commissioner of Internal Revenue in cases involving disputed assessments" only but also includes "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue".

Petitioner also argues that the Supreme Court has expressly and categorically ruled that when the tenor of the collection letter shows that such is the final decision of the CIR, the said collection letter may be the subject of a petition for review with this Court, even without an administrative protest. It bears great emphasis that petitioner cannot be expected to be able to file an administrative protest to the Assessment Notices which it never received. The tenor of the PCL forecloses any opportunity for the petitioner to file its administrative protest.

Petitioner further argues that it was denied due process when respondent failed to send the Notice of Final Assessment to it. It should be emphasized that before a taxpayer is expected to file an administrative protest, a Final Assessment Notice should be sent to it, such is absent in the present case.

Petitioner emphasizes that one of the main issue in the present case is the nullity and invalidity of the Assessment Notices which were never sent to petitioner. The failure of respondent to properly send the notices to the petitioner, therefore, forms part of the issues raised in the petition for review. Moreover, assuming *arguendo* that the non-receipt of the same was not raised in the petition for review, the said issue can still be discussed by the Court as it is intimately related and is necessary for the final determination of the present case.

Lastly, petitioner asserts that the present motion for reconsideration is defective as the respondent failed to set the same for hearing. As such, the same should be treated as a mere scrap of paper undeserving of any cognizance by the Court.

We find no merit in the motion for reconsideration.

A perusal of respondent's Motion for Reconsideration reveals that the grounds relied upon are but a mere rehash or reiteration of the arguments raised before the Court in Division and the Court *En Banc*, which had already been considered, thoroughly discussed and passed upon in the assailed Decision.

Anent respondent's argument that the issue of due process was never raised by petitioner in its petition for review dated September 16, 2011 nor was it one of the issues stipulated by the parties in their respective pre-trial briefs before the Court in Division, suffice it to say that the issue on due process, though not specifically mentioned as an issue at the pre-trial, may be tackled by the Court considering that it is necessarily intertwined and intimately connected with the issues[3] agreed upon by the parties and necessary for the complete adjudication of the case.

In relation thereto, paragraph 2, Section 1 of Rule 14 of the RRCTA expressly provides that 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.

Thus, the Court finds it necessary to address the issue on due process to achieve an orderly disposition of the present case.

Moreover, in its Opposition (Re: Respondent's Motion to Dismiss dated 20 September 2013)[4] filed before the Court in Division, petitioner discussed its argument on due process. In paragraph 17 thereof, petitioner stated that "[i]t bears great emphasis that the Respondent made an express admission that the Petitioner never received any final assessment notice from the Respondent"[5] and in paragraph 18, "xxx the Respondent cannot deny that the assessment notices subject of the instant case were neither sent to nor received by the Petitioner. xxx Respondent cannot pass the blame on the Petitioner for seeking relief from the Honorable Court by reason of Respondent's *violation of due process*."[6]

Thereafter, the issue/argument on due process was given more emphasis in petitioner's Motion for Reconsideration [Re: Resolution dated 29 January 2014][7], although the Court in Division did not pass upon the same either in its Resolution

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[3] Pre-Trial Order, division docket, pp. 136-137.
B. Stipulated Issues:
1. Whether or not the Honorable Court has jurisdiction to entertain the instant Petition for Review;
2. Whether or not Assessment Notice No. 32-06-IT-0242 for income tax amounting to Php1,578,860.37, including increments, and Assessment Notice No. 32-06-VT-0243 for deficiency VAT, including increments, have become final and demandable;
3. Whether or not petitioner is liable for deficiency income tax and value-added tax for taxable year 2006;
4. Whether or not the Waiver complied with the requirements of RMO No. 20-90;
5. Whether or not the Assessment Notices and Preliminary Collection Letter should be declared as null and void, cancelled, withdrawn and with no force and effect for having been issued beyond the prescriptive period for assessment and collection of internal revenue taxes; and
6. Whether or not petitioner is liable to pay the amount of Three Million One Hundred Sixty Four Thousand Six Hundred Seventeen and 43/100 Pesos (P3,164,617.43) as alleged deficiency income tax and value-added tax for the taxable year 2006, considering that the Assessment Notices and Preliminary Collection Letter issued for its collection are null and void, and considering further that respondent's right to collect the same has already lapsed.

[4] Division docket, pp. 449-485.
[5] Division docket, p. 456.
[6] Division docket, p. 457.
[7] Division docket, pp. 501-534, specifically, pp. 526-531.

dated January 29, 2014, dismissing the petition for review, nor in its Resolution dated April 23, 2014, disposing petitioner's motion for reconsideration. Therefore, respondent's contention that there was a change of theory on appeal cannot be sustained.

Even granting that the issue of due process was not specifically raised or assigned as error by the parties, the Court *En Banc* is still empowered to consider the same if it is necessary in arriving at a just resolution of the case. In *Heirs of Carlos Alcaraz vs. Republic of the Philippines*[8], the Supreme Court held that the appellate court has the power to review the appealed case in its entirety, explaining thus:

> "In any event, when petitioners interposed an appeal to the Court of Appeals, the appealed case was thereby thrown wide open for review by that court, which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy. Given this power, the appellate court has the authority to either affirm, reverse or modify the appealed decision of the trial court. To withhold from the appellate court its power to render an entirely new decision would violate its power of review and would, in effect, render it incapable of correcting patent errors committed by the lower courts."

The issue of due process is a pivotal question in this case. A determination that there was a violation of due process because no valid assessment notice was sent would render the assessment void and a void assessment bears no valid fruit.[9] Thus, the resolution of the due process issue is, without a doubt, necessary at arriving at a fair and just disposition of the case.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[8] G.R. No. 131667, July 28, 2005.
[9] *CIR vs. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

WE CONCUR:

(I maintain my dissent)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(I join dissent of Presiding Justice del Rosario)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(I join dissent of Presiding Justice del Rosario)
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S
MA. BELEN M. RINGPIS-LIBAN
Associate Justice