REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HON. THELMA S. MILABAO OIC REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE, REGION NO. 18,
Petitioner,

CTA EB No. 1782
(CTA Case No. 9039)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ*.

-versus-

Promulgated:

DIONISIA D. PACQUIAO,
Respondent.

JUL 07 2020
3:08 p.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

On July 5, 2019, the Court rendered a Decision,[1] which disposed the present case in the following fashion:

> **WHEREFORE**, the Petition for Review dated February 21, 2018, filed by petitioner Hon. Thelma S. Milabao is **DENIED**. The challenged Decision and Resolution dated May 30, 2017 and January 18, 2018, respectively, both rendered by the Court in Division are **AFFIRMED**.
>
> **SO ORDERED**.

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1 *Rollo*, pp. 92-111.

In so ruling, the Court *En Banc* held that the Court in Division has the requisite competence to entertain respondent's appeal. It explained that under Section 228 of the National Internal Revenue Code (NIRC), as amended, the taxpayer has a period of 30 days from receipt of the Final Decision on Disputed Assessment (FDDA) to lodge an appeal with the Court in Division, lest the disputed assessment shall become final, executory and demandable. Given that respondent received petitioner's FDDA dated January 5, 2015 on March 19, 2015, respondent had until April 19, 2015 to seek judicial recourse. Hence, her Petition for Review was seasonably instituted with the Court in Division on April 17, 2015.

Further, the Court *En Banc* upheld the ruling of the Court in Division nullifying petitioner's deficiency income tax (IT) and valued-added tax (VAT) assessments for taxable year (TY) 2010 based on the following grounds : 1) Analyn N. Abrera, the person to whom petitioner served the Preliminary Assessment Notice (PAN), was not authorized by respondent to receive it for and in her behalf; 2) assuming that Analyn N. Abrera was authorized to receive the PAN for respondent, petitioner failed to accord her the full benefit of the mandatory 15-day period to respond thereto pursuant to Section 228 of the NIRC, as amended, as implemented by Revenue Regulations (RR) No. 12-99; and 3) CIR or petitioner failed to issue a valid letter of authority (LOA) in favor of Revenue Officers (ROs) Sittie Skhanesa Jalila A. Ali and Leilah Jane L. Dohinog, the BIR examiners who conducted the tax audit for TY 2010 against respondent.

In her Motion for Reconsideration[2] dated July 26, 2019, petitioner insists that the Court in Division is without jurisdiction over the present case and imputes error to the Court *En Banc* in ruling otherwise. She claims that pursuant to Section 228 of the NIRC, as amended, respondent had thirty (30) days from receipt of the FDDA to appeal with the Court in Division. Thus, respondent's failure to appeal her Letter dated January 23, 2014 containing the FDDA, rendered the subject assessments incontrovertible, such that it could no longer be assailed via an appeal with the Court in Division.

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2 Ibid. at pp. 112-145.

Further, respondent's act of seeking further reconsideration of her alleged FDDA of January 23, 2014 was a faulty recourse not sanctioned by law, or by any BIR rules and regulations. The proper procedure to question such FDDA was to appeal with Court in Division within thirty (30) days from receipt thereof, or in the alternative, elevate the same to the CIR within the same period of time. For respondent's inability to avail either of the foregoing remedies, the FDDA dated January 23, 2014 became immutable, says petitioner.

Petitioner also contends that her Letter dated March 17, 2015 appealed by respondent with the Court in Division was not the FDDA contemplated in the law and jurisprudence for it was issued merely to remind respondent of her previously issued FDDA dated January 5, 2015. Since respondent was unable to impugn the said FDDA of January 5, 2015 before the Court in Division within 30 days from its receipt, a judicial review of the questioned assessments would no longer be possible.

On the merits of the case, petitioner believes that her presentation of the pertinent registry return receipt, together with the Certification from the Koronadal Post Office, was sufficient to establish that the subject PAN was mailed and received by respondent, following established jurisprudence.[3]

Respondent is likewise estopped from denying receipt of the PAN, having admitted receipt of the various BIR correspondences[4] and notices[5] previously issued and sent to her registered address, just as the PAN.

Further, the defense of non-receipt of the PAN appears to be an afterthought as it was not raised at the earliest opportunity in her protest against the Formal Letter of Demand (FLD) but only a year after the FDDA of July 21, 2014 was issued. Due to respondent's inability to challenge

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3 *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.

4 Follow-Up Letter dated June 17, 2013 and alleged Decision denying respondent's protest to FLD.

5 Letter Notice No. 110-TRS-10-00-00019; and FLD.

the PAN, the issuance of the FLD on October 16, 2013 was in order. All these circumstances, according to petitioner, illustrate that respondent snoozed on her right to assail the assessment issued against her thereby allowing laches to set, precluding her from questioning the subject assessment.

Finally, petitioner believes that issuance of an LOA was not necessary in this case since it was the CIR himself who conducted the tax audit for TY 2010 against respondent, hence, the Letter Notice (LN) she issued was sufficient to generate a valid assessment.

Despite notice,[6] respondent failed to file comment/opposition to petitioner's Motion for Reconsideration.

THE RULING OF THE COURT

What falls into the Court's field of vision are the very same arguments that petitioner invoked in her Petition for Review dated February 21, 2018, all of which were meticulously addressed and passed upon by the Court in the impugned Decision of July 5, 2019. To discuss them anew is a waste of time and resources of the Court.

WHEREFORE, finding no significant reason to modify, much more reverse the impugned Decision dated July 5, 2019, petitioner's Motion for Reconsideration dated July 26, 2019 is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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6 Records verification report dated June 5, 2020.

We Concur:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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	Present:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, *and* **MODESTO-SAN PEDRO,** *JJ.*
DIONISIA D. PACQUIAO, *Respondent.*	Promulgated: JUL 07 2020 3:08 p.m.

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the ponencia in denying the Motion for Reconsideration filed by petitioner on July 29, 2019 which assails the Court *En Banc*'s Decision dated July 5, 2019.

Citing my Dissenting Opinion in *Commissioner of Internal Revenue vs. South Entertainment Gallery*[1] ("*SEGI case*" for brevity) and *Drugmaker's Biotech Research Laboratories vs. Commissioner of Internal Revenue*,[2] petitioner insists that the Court of Tax Appeals (CTA) has no jurisdiction since the assessment has become final and unappealable for respondent's failure to file a timely appeal of petitioner's decision denying her protest. According to petitioner, the Letter dated March 19, 2015 and the alleged January 5, 2015 Final Decision on Disputed Assessment (FDDA) are not the decision or

[1] CTA EB No. 1246, July 22, 2016.
[2] CTA Case No. 8664.

ruling contemplated by law as appealable to the CTA, even when the FDDA clearly indicated that it was the final decision on the matter.

Furthermore, to support her claim that the Court erred in declaring that the assessments are void for petitioner's failure to prove service of the Preliminary Assessment Notice (PAN) to respondent, petitioner again cites my Dissenting Opinion in the *SEGI* case, wherein I found that the evidence presented by the Commissioner of Internal Revenue (CIR) was sufficient to discharge the burden of proof, which was shifted upon the CIR, when SEGI denied the receipt of the Final Assessment Notice (FAN).

I wish to clarify that it has been my consistent position that a taxpayer who is adversely affected by the FDDA issued by the representative of the CIR may either file a Petition for Review with the CTA or elevate the protest through request for reconsideration (an administrative appeal of the FDDA) with the Office of the CIR, both within thirty (30) days from receipt of the FDDA.

In the instant case, respondent opted to appeal the FDDA dated January 5, 2015 signed by petitioner, which was enclosed in a Letter dated March 17, 2015 and received by respondent on March 19, 2015, by filing a Petition for Review with the Court. The FDDA clearly states that it is the final decision of petitioner and that if respondent disagrees, she may appeal the final decision to the CTA. **Since the language used and the tenor of the FDDA indicate that it is the final decision of petitioner on the matter, the same is appealable to this Court**, following the pronouncement of the Supreme Court in *Allied Banking Corporation vs. Commissioner of Internal Revenue*[3] and *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*[4]

With regard to the receipt of PAN, a perusal of the SEGI case shows that the facts surrounding the same are not on four squares with the instant case. In said case, SEGI impliedly admitted the existence as well as its receipt of the FAN when it voluntarily paid the deficiency withholding tax assessment (one of the items assessed in the FAN) upon its receipt of the Preliminary Collection Letter.

Meanwhile, in the case at bar, petitioner failed to establish how the person who received the PAN as shown in the Certification issued by Philippine Postal Office, Ms. Analyn N. Abrera, was related to respondent.

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[3] G.R. No. 175097, February 5, 2010.
[4] G.R. No. 148380, December 9, 2005.

Moreover, even assuming that respondent indeed received the PAN, records show that the Formal Letter of Demand and FAN were issued only on October 16, 2013, or two (2) days before respondent's alleged receipt of the PAN on October 18, 2013. Hence, the FLD and FAN were issued prior to the lapse of the 15-day period given to respondent to contest the PAN, as mandated under Section 228 of the National Internal Revenue Code of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013. Following the Court *En Banc*'s pronouncement in *Commissioner of Internal Revenue vs. Pacific Bayview Properties, Inc.*,[5] which has already been effectively affirmed by the Supreme Court,[6] depriving respondent of said 15-day period is a violation of her right to due process, making the assessment void.

All told, I VOTE to DENY the Motion for Reconsideration filed by petitioner for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] CTA EB No. 1677.
[6] G.R. No. 242640, February 20, 2019.