Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

WGC, INC., represented by its President, WILLIAM G. CHU,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE, BIR REVENUE DISTRICT REGION NO. 16 and BIR REVENUE DISTRICT REGION NO. 98, CAGAYAN DE ORO CITY, and REGIONAL TRIAL COURT BRANCH 38, CAGAYAN DE ORO CITY,
Respondents.

CTA AC No. 124
(SP Civil Case No. 2012-252)

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
FEB 02 2016
9:10 a.m.

x--x

RESOLUTION

CASANOVA, ***J.:***

This resolves petitioner's Motion for Reconsideration[1] filed, via registered mail, on November 12, 2015, with respondent's Comment (On the Motion for Reconsideration) filed, thru registered mail, on January 4, 2016, praying for this Court to reverse its Decision[2] dated October 27, 2015, and to issue a preliminary injunction to suspend the implementation of the Warrant of Distraint and/or Levy dated July 8, 2015.

The dispositive portion of the Assailed Decision reads:

> **"WHEREFORE**, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of jurisdiction. Consequently, the hearing for petitioner's "Petition for

[1] Docket (Vol. II), pp. 386-390.
[2] Docket (Vol. I), pp. 369-383.

Annulment or Suspension of Warrant of Distraint/Levy [with Prayer for the Issuance of Writ of Injunction]" set on October 29, 2015, is hereby cancelled.

SO ORDERED."

In its Motion, petitioner avers that the filing of the instant Petition for Review was brought about by the "non-giving of due course or non-recognition by the BIR Revenue District Office, Cagayan de Oro City", of petitioner's April 10, 2015 letter of appeal, filed before the Office of the Commissioner of Internal Revenue, as evidenced by the subsequent issuance of a warrant of distraint and/or levy[3], pending resolution of said letter of appeal. In the said letter, petitioner argued that the assessments are invalid and void for being based on a surveillance, where no parameters or criteria was set up as to the choosing of the surveillance period. It further adds that its right was violated by the non-issuance of a formal assessment notice, contrary to the requirements of the National Internal Revenue Code and Revenue Regulations No. 17-2013.

Petitioner, likewise, avers that while its case is pending, Revenue District Officer Teodoro A. Huelva issued the following: Preliminary Collection Letter, Second Collection Letter and Final Notice Before Seizure to enforce the alleged tax liability of petitioner.

With the foregoing backdrop, petitioner claims that it has no other remedy except to invoke the jurisdiction of this Court since it is the only tax court "vested with appellate jurisdiction to review the error committed by its subordinate in the exercise of their limited jurisdiction, lest injustice be perpetrated by the enormous power of the state against an ordinary citizen." Also, petitioner insists that letting the Warrant of Distraint go unchecked would be putting the cart ahead of the horse considering that petitioner still has a pending letter of appeal with the Commissioner of Internal Revenue.

Lastly, citing the cases of *Vicente Milando vs. CIR*[4] and *CIR vs. International Pharmaceuticals, Inc.*[5] of the Court of Tax Appeals, petitioner insists that the issuance of a warrant of distraint and or levy to enforce collection would constitute indirect denial of protest which is appealable to the Court of Tax Appeals.

---

[3] Dated July 8, 2015, signed by Revenue Distric Officer Teodoro A. Huelva.
[4] CTA Case No. 1256, February 25, 1964
[5] CTA EB No. 666160, May 21, 1990.

On the other hand, respondents argue that petitioner is improperly invoking the Court of Tax Appeals' power to review matters that had not been properly ventilated in the court a quo—the validity of the assessment, which petitioner itself denied as an issue during the proceedings in the court a quo. It is also asking the Court to restrain respondent's actions and declare the same void through the review of the RTC proceedings that did not involve the same.

Further, respondents aver that the propriety of the issuance of the warrants of distraint and/or levy is a separate and distinct issue that should be threshed out in a separate proceeding that directly tackles the issue.

Furthermore, respondents posit that the instant case warrants immediate dismissal on the ground of *lis pendens*. Accordingly, the appealed case is now submitted for decision pursuant to the July 29, 2015 Resolution of the Twenty-Second (22nd) Division of the Cagayan de Oro City Court of Appeals.

The Court is not impressed with petitioner's Motion.

A close reading of the issues and arguments raised in the instant Motion for Reconsideration show that petitioner raised for the first time the issue on the propriety of the issuance of the warrants of distraint and/or levy. Notably, such issue was never raised in petitioner's pleadings before the court *a quo* or in petitioner's Petition for Review. Neither did petitioner present any evidence to prove that the assessments issued against it are invalid or void to warrant the suspension of the subject warrants of distraint or levy. Settled is the rule that "issues not previously ventilated cannot be raised for the first time on appeal"[6], more specially in a Motion for Reconsideration of a Decision".[7] On the basis of this point alone, such argument of petitioner must fail.

The Supreme Court has consistently ruled that that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic rules of

[6] Bank of the Philippine Islands vs. Shembergh Biotech Corporation and Benson Dakay, G.R. No. 162291, August 11, 2010; National Association of Electricity Consumers for Reforms, Inc. (NASECORE) vs. Energy Regulatory Commission (ERC), G.R. No. 190795, July 6, 2011.
[7] Polanco vs. Cruz, G.R. No. 182426, February 13, 2009.

fair play, justice and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel. [8]

With regard to the other arguments raised, *We* find the same to be a mere rehash of the arguments raised in petitioner's Petition for Review, which have been sufficiently passed upon by the Court in the Assailed Decision. Thus, the Court finds no cogent reason to modify or reverse the Assailed Decision.

WHEREFORE, finding no merit, the Motion for Reconsideration filed by petitioner on November 12, 2015, is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[8] S.C. Megaworld Construction and Development Corporation vs. Engr. Luis U. Parada, represented by Engr. Leonardo A. Parada of Genlite Industries, G.R. No. 183804, September 11, 2013, citing Besana v. Mayor, G.R. No. 153837, July 21, 2010, Jacot v. Dal, G.R. No. 179848, November 27, 2008, and Villaranda vs. Villaranda, G.R. No. 153447, February 23, 2004.