REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ANAPI MULTI-PURPOSE COOPERATIVE, *Petitioner*,	**CTA Case No. 9787**
-versus-	Members: **DEL ROSARIO**, *P.J.,Chairperson*, **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, BIR REGIONAL DIRECTOR, REGION 12, BACOLOD CITY, *Respondents.*	Promulgated: SEP 27 2021 · 2:05 p.m.

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RESOLUTION

MANAHAN, *J.*:

This resolves respondents' *Motion for Reconsideration Re: Decision dated 16 November 2020*, posted on December 7, 2020 and received by the Court on December 16, 2020. Respondents assail the Decision dated November 16, 2020, which disposed of the case, as follows:

> "**WHEREFORE**, the instant Petition for Review is **GRANTED**. Respondent's right to collect the subject deficiency VAT has prescribed. Accordingly, the Warrant of Distraint and/or Levy issued on March 8, 2018, and Warrants of Garnishment issued on March 16, 2018 are **CANCELLED**.
>
> **SO ORDERED**."[1]

In the *Motion*, respondents state that the Court has no jurisdiction considering that the assessment has become final and executory due to petitioner's failure to timely protest the Amended Formal Letter of Demand and Assessment Notices (FLD/FAN). Respondents also reiterate that petitioner is liable for advance value-added tax (VAT) considering that it does not own or produce raw sugar cane, and the subsequent refined

[1]Decision dated November 16, 2020, p. 13.

sugar withdrawn from the sugar central. Respondents also state that the assessment has not prescribed and has bases both in fact and law.

On May 21, 2021, the Court received petitioner's *Comment to Motion for Reconsideration Re: Decision dated 16 November 2020*, which was posted on February 19, 2021.

In its *Comment*, petitioner states that the Court has jurisdiction over the case as the period to collect the assessed taxes has prescribed; that it has proven that it is a tax-exempt agricultural cooperative; that it is not required to pay the advance VAT or to file a return for VAT transactions; that it only needs to secure the corresponding Authorization Allowing Release of Refined Sugar (AARRS) prior to the withdrawal of refined sugar; that it has proven that it is the owner of the refined sugar withdrawn from the mill; and, that the respondents' right to assess has already prescribed.

The *Motion* lacks merit.

We reiterate that the Court has jurisdiction over the subject case. It is true that petitioner failed to file a protest to the Amended Formal Letter of Demand/Assessment Notices (FLD/FAN), all dated December 9, 2010, *to wit*:

> It is undisputed that the Amended FLD/FAN, all dated December 9, 2010, were issued demanding payment of the amount of Php48,075,359.69, representing deficiency VAT and compromise penalty for taxable year 2006. The amended FLD specifically stated that: "This cancels FLD/FAN 00229-00230-0031/2009 all dated October 12, 2009."
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> Nowhere in the records does it show that petitioner filed a protest to the said Amended FLD/FAN, as required by Section 228 of the NIRC, and implemented by Sec. 3.1.5 of Revenue Regulation No. 12-99.

Because of such failure to protest, the Amended FLD/FAN became final and executory. Correspondingly, respondents proceeded to collect the assessed deficiency taxes by the issuance of the Warrant of Distraint and/or Levy[2] on March 8, 2018, and the Warrants of Garnishment[3] on March 16, 2018.

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[2]Docket, p. 82.
[3]Docket, p. 83-84.

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Section 7(1) of Republic Act (RA) No. 1125, provides for the jurisdiction of the Court of Tax Appeals (CTA):

> SEC. 7 *Jurisdiction.* – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
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> (1) Decision of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue**;
>
> (2) xxx

Based on the foregoing, the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and or levy issued by the BIR is valid.[4]

Thus, notwithstanding that the FLD/FAN have become final due to petitioner's failure to protest the same, the Court still has jurisdiction to review the validity of respondents' issuance of the Warrant of Distraint and/or Levy and the Warrants of Garnishment, under "other matters" of Section 7(1) of RA No. 1125.

As found in the assailed Decision, the issuance of the subject Warrant of Distraint and/or Levy and the Warrants of Garnishment was found to be beyond the 3-year prescriptive period to collect deficiency assessments. The pertinent discussions are quoted below:

> xxx The period for assessment and collection of taxes is provided in Section 203 of the NIRC, as follows:
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> > SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided

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[4]*Philippine Journalists, Inc. v Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004

> in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period:*Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year prescriptive period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, the Supreme Court stated:

> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. <u>However, when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding</u>. The assessment of the tax is deemed made and the three-year period for collection of the assessed tax begins to run on the date the assessment notice has been released, mailed or sent to the taxpayer.

In the instant case,the parties had stipulated only that the Amended FLD/FAN dated December 9, 2010 were issued demanding payment of the amount of Php48,075,359.69, representing deficiency VAT and compromise penalty for taxable year 2006. A perusal of the Amended FLD/FAN in the BIR Records show that there is a stamp indicated that said documents were mailed on December 22, 2010. Thus, applying the foregoing discussion, respondent had three (3) years from December 22, 2010 within which to collect the said assessed deficiency VAT, or until December 22, 2013. The Warrant of Distraint and/or Levey (sic)was issued on March 8, 2018 and served on March 14, 2018, and the Warrants of Garnishment were issued on March 16, 2018. Clearly, these collection efforts by respondent were way beyond December 22, 2013 and therefore prescribed.

The Court finds no reason to discuss the remaining issues, which are in fact mere rehash of respondents' arguments as to the allegation that petitioner does not own the sugar withdrawn from the sugar mill.

WHEREFORE, respondents' *Motion for Reconsideration Re: Decision dated 16 November 2020* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(no part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice