REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

Y & R PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9437**
	Members:
- versus -	**FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 04 2019 3:56 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution are:

1. Petitioner's **Motion for Partial Reconsideration (of the Decision dated 31 August 2018)**, filed on September 25, 2018, with Respondent's **Comment/Opposition (On Motion for Partial Reconsideration)**, filed through registered mail on October 16, 2018 and received by the Court on October 24, 2018; and

2. Respondent's **Motion for Reconsideration**, filed through registered mail on September 25, 2018 and received by the Court on October 02, 2018, with Petitioner's **Comment/Opposition (On Respondent's Motion for Reconsideration dated 24 September 2018)**, filed on October 26, 2018.

Both parties seek reconsideration of the Court's Decision dated August 31, 2018, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the instant Amended Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND** the amount of **Php17,202,373.31** in favor of Petitioner representing the erroneously collected taxes.

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

Petitioner anchors its arguments on the following grounds:

I. The Court erred in considering and giving due weight to the Bureau of Internal Revenue ("BIR") records. Respondent refused to present any evidence to support his case and the BIR records have not been formally offered. As far as the instant proceedings are concerned, the BIR records have not been proven to even exist; and

II. The Court erred in absolving Respondent from paying the legal interest. Collection was attended by such arbitrariness, it cannot be indirectly sanctioned by this Court by not compensating the Petitioner as deterrent to Respondent's abuse of power.

Petitioner contends that this Court referred to the BIR records for the supposed Preliminary Assessment Notice ("PAN") and Final Assessment Notice ("FAN") to conclude that Respondent sent them to Petitioner's old address and issued beyond the three-year prescriptive period. Petitioner also expresses that the Court relied on the BIR records to rule that Letter Notice ("LN") No. 050-RLF-07-00077, the supposed basis of the contested deficiency assessment, was issued and that no Letter of Authority ("LOA") was ever issued. Petitioner claims that while the legal conclusions made by this Court, relying on the BIR records, were correct and favorable to Petitioner, the latter takes exception. Petitioner invites this Court to reconsider its reliance on the BIR records on the ground that the said records, not having been introduced as evidence, had not been properly identified/marked, its purpose established, and proven to be genuine, unaltered, or to even exist. Allegedly, while authentication is not required for public documents, the same must first be introduced during the trial, to afford the other party the opportunity to examine whether the document is an original record, to cross-examine the witness identifying the document, and to give the other party the opportunity to present rebuttal evidence. As such, Petitioner insists that the supposed LN, PAN, and FAN cannot be considered to be evidence proving the facts stated therein.

Although Petitioner agrees with the decision of the Court that Respondent erroneously/illegally collected the garnished amount, the former wishes to point out that its position is based on the inexistence of the LOA, LN, PAN, and FAN, all of which Respondent failed to present.

Petitioner further claims that the Tax Code and New Civil Code have provisions that authorize recovery of damages such as interest from the BIR. While Section 227 uses the term "damages", Petitioner states that what it had prayed for in the Amended Petition for Review referred to the compensation for the damage it suffered and to be suffered for its inability to use its cash resources while the same was tied up to coffers of the government. The alleged interest that Petitioner is claiming, is the damages contemplated under Section 227 of the Tax Code. Petitioner asserts that Respondent already admitted that there was no LOA issued in this case and that the former never received the PAN and FAN as shown in the BIR's Letters marked as Exhibits "P-5-1" and "P-6-1". According to Petitioner, the 1987 Constitution compels Respondent and his counsel to honor and to faithfully execute Revenue Regulations ("RR") Nos. 12-99 and 18-13 which implement the provisions of the Tax Code. However, despite the alleged admission of Respondent and his counsel to the lack of due process, Respondent's counsel still recommended the collection on the assessment. Petitioner believes that such actions clearly show inexcusable or obstinate disregard of legal provisions.

Respondent interposes his objection on Petitioner's assertion that this Court erred in considering and giving due weight to the BIR records specifically the LN, PAN, and FAN because they were not formally offered in evidence. It is the position of Respondent that upon transmittal of the BIR records to this Court, the said records have been incorporated in the case records and can be examined by the Court to render a decision.

As to the six percent (6%) legal interest, Respondent reiterates the ruling of this Court applying the case of *Atlas Fertilizer Corporation v. Commissioner of Internal Revenue* where the Supreme Court pronounced that payment of interest to accrue on the amount to be refunded to taxpayer must either be clearly or expressly authorized by law or the collection of the tax was attended by arbitrariness. Assuming for the sake of argument that Section 227 of the National Internal Revenue Code ("NIRC") of 1997, as amended, allows the recovery of damages against the BIR for acts done in official capacity, the claim for damages that Petitioner was asking in the form of interest for its inability to use its cash resources cannot be enforced since the said claim is allegedly in the nature of a suit against the State.

We find Petitioner's arguments untenable.

In deciding the instant case, the Court did not consider evidence that has not been formally offered. Indeed, Section 34, Rule 132 of the Rules of Court provides that the court shall consider no evidence which has not been formally offered. The Court clarifies that the reference to the BIR Records in the footnotes of the assailed Decision merely shows the existence of the LN, PAN and FAN in the BIR Records but a reading of the assailed Decision would show that what was appreciated or considered by the Court were the parties' arguments in their respective pleadings and Petitioner's evidence.

In ruling that "Respondent failed to discharge the burden of proving the PAN and FAN were actually received by Petitioner or its duly authorized agent, the said assessments notices are deemed to have not been issued by Respondent", the Court mainly considered the following:

1. Respondent's Letter[1] dated March 08, 2016 sent to Petitioner, where the former stated that the PAN dated October 12, 2012 and FAN dated November 14, 2012 were sent through registered mail but were returned to sender for the reason "MOVED OUT". Also, that it was not sufficient for a taxpayer to file only an Application for Registration Information Update Form (BIR Form No. 1905), for the purpose of transferring and changing the taxpayer's registered address;

2. The testimony of Petitioner's witness, Mr. Ricky B. Gundran, denying receipt of the PAN and FAN[2] and Respondent's failure to present any evidence that the said notices were received by Petitioner;

3. The parties' stipulation that Respondent issued a Preliminary Collection Letter[3] dated September 07, 2015 demanding payment for Petitioner's alleged deficiency taxes, pursuant to Assessment/Demand No. F-050-LNTF-07-059[4]; and

4. Respondent's Letter[5] dated September 26, 2011 and Petitioner's Certificate of Registration[6] with the date "AUG 20, 2009", showing Petitioner's new address in Taguig City and Petitioner's argument that its old address was at 20th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City and despite the fact that its Certificate of Registration, indicating its new address at 9th Floor Marajo Tower 312, 26th

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1 Docket, Exhibit "P-6-1", pp. 122-123.
2 *Id.*, Exhibit "P-36", Q/A 37, p. 101.
3 *Id.*, Exhibit "P-3", p. 117.
4 *Id.*, Joint Stipulation of Facts and Issue, Par. I (1.4), p. 529.
5 *Id.*, Exhibit "P-2", p. 116.
6 *Id.*, Exhibit "P-19-2", p. 153.

> St. cor. 4th Ave., Fort Bonifacio Global City, Taguig, was issued on February 24, 2010, the PAN and FAN allegedly issued on October 12, 2012 and November 14, 2012, respectively, were sent to its old office.[7]

Likewise, in ruling that "the PAN and the FAN are void since they were issued pursuant only to Letter Notice No. 050-RLF-07-00-00077 and without any Letter of Authority", the Court mainly considered the following:

1. Respondent's Letter[8] dated December 11, 2015 to Petitioner stating that the letter refers to the latter's delinquent account amounting to Php17,202,373.31, representing deficiency income taxes and value-added tax ("VAT") generated from **Letter Notice** No. 050-RLF-07-00-00077 dated July 01, 2009 for calendar year 2007;

2. No LOA or LN was presented in evidence and various correspondence[9] of Respondent to Petitioner did not mention any LOA but shows the number of the Assessment/Demand No. as "F-050-**LNTF**-07-059" (LNTF is the acronym for "Letter Notice Task Force");

3. The testimony of Petitioner's witness, Mr. Ricky B. Gundran, denying receipt of any LN or LOA[10]; and

4. Respondent's allegation that because of Petitioner's failure to respond to the LN, Respondent issued a PAN against Petitioner.[11]

Moreover, in ruling that "Respondent's right to assess Petitioner for deficiency income tax and VAT has already prescribed", the Court mainly considered the following:

1. Petitioner's Annual Income Tax Return[12] and quarterly VAT returns[13] for 2007; and

2. Various correspondence[14] of Respondent to Petitioner stating the date of the FAN.

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7 *Id.*, Petitioner's Memorandum, Pars. 2.2, 2.10 and 2.11, pp. 601 and 604-605.
8 *Id.*, Exhibit "P-5-1", p. 120.
9 *Id.*, Exhibits "P-1", "P-3", "P-4-1" and "P-7", pp. 115, 117, 118 and 157, respectively.
10 *Id.*, Exhibit "P-36", Q/A 37, p. 101.
11 *Id.*, Respondent's Memorandum, Par. 2, pp. 639-640.
12 *Id.*, Exhibit "P-8", pp. 279-280.
13 *Id.*, Exhibits "P-9-1" to "P-9-4", pp. 284-291.
14 *Id.*, Exhibits "P-1" and "P-6-1", pp. 115 and 122-123, respectively.

Hence, from the foregoing, it was erroneous for Petitioner to argue that the Court relied on the BIR Records in making its ruling. The mention of the BIR Records is merely incidental and whether the same was mentioned or not will not affect the outcome of the case.

As regards Petitioner's argument that it is entitled to six percent (6%) legal interest on the collected garnished amount, the Court reiterates its ruling in the assailed Decision, to wit:

> "In *Atlas Fertilizer Corporation v. Commissioner of Internal Revenue*, the Supreme court ruled that for payment of interest to accrue on the amount to be refunded to taxpayer, it must either be authorized by law or the collection of the tax was attended by arbitrariness, *viz*:
>
> > 'But the more important consideration is the well settled rule that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest. Likewise, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness.'
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> None of these two circumstances prevail in the case at bar."

Further, Section 227 of the NIRC of 1997, as amended, provides:

> "SEC. 227. ***Satisfaction of Judgment Recovered Against any Internal Revenue Officer.*** – When an **action is brought against any Internal Revenue Officer to recover damages by reason of any act done in the performance of official duty, and the Commissioner is notified of such action** in time to make defense against the same, through the Solicitor General, any judgment, damages or costs recovered in such action shall be satisfied by the Commissioner, upon approval of the Secretary of Finance, or if the same be paid by the person sued shall be repaid or reimbursed to him."[15]

The aforesaid provision cannot be applied in this case because this petition was not filed against an internal revenue officer. Even assuming that this case was filed against the revenue officer, the Commissioner was not notified of such action.

Respondent's Motion for Reconsideration

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[15] *Emphasis supplied.*

Respondent assails the above-mentioned Decision on the ground that it is contrary to the applicable law, rules and regulations and the evidence is insufficient to justify the decision.

Respondent avers that the BIR, as a whole, was not fully informed of Petitioner's new address. Allegedly, the application of Petitioner's change of address was contrary to Section 11 of RR No. 12-85. Respondent avers that the BIR, headed by the Respondent Commissioner, operates through various national office organizational units, regional and district offices. Respondent explains that notice of change of address to one did not necessarily mean notice to other unless and until the taxpayer fully informed the BIR of its change of status or any update provided by the relevant rules and regulations. Allegedly, RR No. 12-85 requires that in case of change of address, the taxpayer must not only give written notice to the Revenue District Office ("RDO") having jurisdiction over his former legal residence but must also copy furnish the RDO having jurisdiction over his new legal residence, the Revenue Computer Center (now Revenue Data Center), and the Receivables Accounts Division of the BIR National Office in Quezon City. As such, Respondent asserts that in case of failure to do so, any communication previously sent to his former legal residence shall be valid and binding. Respondent points out that Petitioner failed to offer any evidence that would show its compliance with the aforesaid requirement as mandated by Section 11 of RR No. 12-85.

It is the position of Respondent that BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, more so because of the fault of the taxpayer in not fully informing the BIR. Respondent likewise alleges that Petitioner cannot close its eyes on the waiver of the Respondent in a Letter dated September 26, 2011 stating that the coverage of the initial audit does not include findings that may be generated from the Bureau's Tax Reconciliation System-Letter Notice (TRN-LN) and Letter Notice-Reconciliation of Listing for Enforcement System (LN-RELIEF). Respondent posits that the examination of Petitioner's case *via* a "no-contact-audit-approach" pursuant to a LN does not need the issuance of an LOA. Allegedly, the 1997 Tax Code, as amended, specifically Section 6 thereof, does not limit the power of the Commissioner of Internal Revenue to examine and to determine tax deficiency of any taxpayer only through issuance of LOAs. Respondent expresses that since the Commissioner himself is the one who authorized the investigation, the issuance of an LOA is not a requirement.

Respondent also argues in his motion that the extraordinary prescriptive period of ten (10) years should be applied in this case because the audit investigation revealed that there were undeclared taxable sales more than thirty percent (30%) of that declared in Petitioner's VAT return.

On the other hand, Petitioner counter-argues that Respondent's motion is without factual and legal basis. Petitioner avers that Respondent did not present nor formally offer any evidence during trial to prove his case.

Petitioner alleges that Respondent's reliance on RR No. 12-85 and Revenue Administrative Order (RAO) No. 15-00 was misleading and incorrect. Petitioner insists that when it changed its address in 2009, requests for transfer of BIR registration were governed by Revenue Memorandum Order ("RMO") No. 40-04, as amended by RMO No. 11-05. Petitioner explains that this case was similar to the case of *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, where the Supreme Court ruled that knowledge of the actual address trumps the taxpayer's alleged failure to update its registration. According to Petitioner, after a LN has served its purpose, a revenue officer should properly secure an LOA before proceeding with further examination and assessment of Petitioner. Petitioner asserts that there was no falsity, fraud or omission that would warrant the application of the 10-year prescriptive period to assess, and it was entitled to a refund in the amount of Php17,202,373.31.

The Court has already ruled in the assailed Decision that an LOA is necessary to proceed with the further examination and assessment of the taxpayer.

Even if the 10-year prescriptive period applies in this case, the Court finds that Respondent failed to prove that the PAN and FAN were actually received by Petitioner. Likewise, it is Respondent's duty to inform Petitioner of the assessment for deficiency taxes as mandated under Section 228 of the NIRC of 1997, as amended.

Accordingly, the Court finds no sufficient and valid reason to disturb the assailed Decision.

WHEREFORE, premises considered, Petitioner's **Motion for Partial Reconsideration (of the Decision dated 31 August 2018)** and Respondent's **Motion for Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice