REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JTKC LAND, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA *EB* No. 2378
(CTA Case No. 9597)

Members:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated: OCT 05 2023 3:15pm

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution are as follows:

1. Petitioner's *Motion for Reconsideration (Re: Decision Promulgated on 05 October 2022)* filed via electronic mail on October 27, 2022 and by personal filing on October 28, 2023 and *Supplement to Motion for Reconsideration (Re: Decision Promulgated on 05 October 2022)* filed on December 2, 2022 with respondent's *Opposition to Petitioner's Motion for Reconsideration and Omnibus Motion* filed on February 6, 2023 and petitioner's *Reply (to Opposition to Petitioner's Motion for Reconsideration and Omnibus Motion dated 03 February 2023)* filed on February 23, 2023; and

2. Petitioner's *Manifestation* filed on August 23, 2023.

I. Petitioner's Motion for Reconsideration

Petitioner seeks reconsideration of the Court's Decision promulgated on October 5, 2022 (Assailed Decision), the dispositive portion of which, reads as follows:

> "**WHEREFORE**, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 13, 2020 and the assailed Resolution dated October 26, 2020 all promulgated by the Second Division of this Court, are hereby **AFFIRMED**.
>
> **SO ORDERED**."

Petitioner's arguments

Petitioner assails the Court *En Banc's* affirmation of lack of jurisdiction over the Petition for Review filed with the Court in Division and maintains that the issue of the validity of the deficiency tax assessments issued against it takes precedence over questions of finality based on the premise that void assessments cannot attain finality. Petitioner further opines that an administrative finding cannot be made valid because of lapse of time and the Court should have primarily resolved the substantive merits thereof before determining the timeliness of filing an appeal with the Court. According to petitioner, the Court cannot focus only on the timeliness of an appeal in a vacuum without determining whether respondent's act of assessing deficiency tax is a valid exercise of its power.

Alternatively, petitioner argues that the determination of whether the imposition of a tax deficiency liability was made with or without factual or legal bases may properly be included in the phrase "other matters" under Section 7 (a)(1) of Republic Act (RA) No. 1125, as amended by RA 9282 and Section 3(a)(1) Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) which is within the jurisdiction of the Court.

Focusing on the deficiency assessments for income tax, value-added tax, withholding tax and documentary stamp tax for taxable year 2010, petitioner alleges that they contained only a set of numbers and tax computations in violation of its right to be apprised of the legal and factual bases of the Bureau of Internal Revenue's (BIR's) conclusions. Further, petitioner contends that the findings which ripened into an assessment were premised on the assumed revocation of a BIR ruling even if the revenue officer's application for revocation remains unacted upon. Petitioner avers that the deficiency tax assessments were based on a deliberate disregard of the BIR ruling and an unauthorized revocation of the same. Harping on the inherent defects of the subject deficiency tax assessments, both procedural and substantive, petitioner reiterates that a void assessment bears no valid fruit, hence, cannot attain finality.

Respondent's counter-arguments

Respondent challenges the validity of the protest filed by petitioner against the subject deficiency tax assessments because it did not contain the facts and the applicable law, rules and jurisprudence to support the arguments therein in violation of Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, as well as its implementing regulations, particularly Section 3.1.5 of Revenue Regulations (RR) No. 12-99. Respondent considers the subject assessments to have become final and executory and demandable as a result of the invalidity of the protest filed. Respondent sees this as an important factor in determining the jurisdiction of the Court as the latter cannot take cognizance of final and executory tax assessments.

Petitioner's Reply to Respondent's Opposition

In its Reply to respondent's counter-arguments, petitioner emphasizes that there was no valid assessment that created an obligation to file a protest or to lodge an appeal. It alleges that it was constrained to file the instant appeal only to protect its constitutional rights.

II. Petitioner's Manifestation filed on August 23, 2023

In its latest *Manifestation*, petitioner cites several cases decided by the Supreme Court and the Court of Tax Appeals (CTA) to support its claim that the invalidity of an assessment renders it incapable of attaining finality. It also cites various BIR Rulings which "recognizes the non-taxability of "pooling of resources" or "project investment agreements" prior and after the BIR ruling it relied on in good faith."

RULING OF THE COURT *EN BANC*

The timeliness of the filing of petitioner's *Motion for Reconsideration* was already settled in the Court *En Banc's* Resolution dated July 7, 2023 where it was ruled that the Motion for Reconsideration filed on October 27, 2022 was filed on time.

As regards petitioner's latest *Manifestation* filed on August 23, 2023, the Court **TAKES NOTE** of the same.

As to petitioner's *Motion for Reconsideration,* the Court finds the arguments of petitioner, particularly on the Court's jurisdiction, to be without merit.

Petitioner insists that a void deficiency tax assessment cannot attain finality and that the Court should have resolved the merits or lack thereof of said assessments before determining the timeliness of the filing of the instant appeal.

In arguing as such, petitioner misses an important point on the issue of jurisdiction which is, that jurisdiction over the subject matter or nature of an action is fundamental and must first be established for a court to act on a given controversy.[1] To inquire into the existence of jurisdiction over the subject matter is the *primary concern* of a court, for thereon would depend on the validity of its entire proceedings.[2] The Supreme Court decision in the case of *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*[3] is worth quoting, thus:

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[1] *AT &T Communications Services, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.
[2] Ibid.
[3] G.R. No. 185666, February 4, 2015.

> "If the court has no jurisdiction over the nature of an action, **its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.**" *(emphasis supplied)*

It is for this reason that the Court *En Banc* in the assailed Decision primarily resolved the issue of jurisdiction and in analyzing the facts of the case and relevant laws and jurisprudence, agreed with the findings of the Court in Division.[4] We quote the narration of facts of the assailed *En Banc* Decision leading up to its conclusion of lack of jurisdiction, to wit:

> "Records show that petitioner received a PAN on December 10, 2013 containing the findings of various tax deficiencies for taxable year 2010.
>
> On January 10, 2014, petitioner then received several FANs for these alleged deficiency taxes for taxable year 2010.
>
> Petitioner filed a protest in the nature of a request for reinvestigation on January 15, 2014.
>
> In response, the Regional Director of Revenue Region (RR) No. 7, Alfredo Misajon and Chief of the Collection Division, Ms. Alice Gonzales issued a PCL dated June 14, 2014 which petitioner received on July 2, 2014.
>
> Petitioner then filed a letter dated July 8, 2014 on July 10, 2014 manifesting its protest against the PCL on the ground of lack of due process.
>
> After nearly two years or on April 26, 2016, petitioner followed up its "protest" against the PCL in a letter addressed to the Collection Division of RR No. 7 or any other appropriate division or department for a response to its letter dated July 8, 2014.
>
> The Court in Division in the assailed Decision, ruled that petitioner should have filed an appeal with the Court of Tax Appeals (the "Court") within thirty (30) days from the date it received the PCL, xxx xxx xxx"

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[4] Second Division's Decision in CTA Case No. 9597 dated July 13, 2020. *cm*

Finding no compelling or persuasive reason to depart from the findings of the Court *En Banc* in the assailed Decision, we reiterate the lack of jurisdiction of the Court over the Petition for Review.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (Re: Decision Promulgated on 05 October 2022)* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(ON OFFICIAL BUSINESS)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

(on leave)
HENRY S. ANGELES
Associate Justice