REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

INTERVET PHILIPPINES, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8815

Members:

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

Promulgated:

AUG 15 2016 2:28 pm

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RESOLUTION

CASANOVA, J.:

For this Court's resolution is respondent's **Motion for Reconsideration**, filed on June 9, 2016, with petitioner's **Comment/Opposition (to Respondent's Motion for Reconsideration dated 9 June 2016)**, filed on July 1, 2016.

Respondent seeks reconsideration of the Court's Decision promulgated on May 24, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments covering income tax, value added tax, expanded withholding tax, and compromise penalty in the total amount of ₱49,139,464.50, inclusive of

[1] Docket, pp. 872-889.

interest, for taxable year 2006 is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED."[2]

Respondent maintains that the Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD) with Assessment Notices were sent to the registered address of petitioner based on the Integrated Tax System. She argues that petitioner is considered to have received the assessment notices because it vacated its registered address without informing the Bureau of Internal Revenue (BIR). In addition, she avers that petitioner failed to prove that indeed it already transferred its business to another registered address because it did not present in evidence the Application for Registration Information Update (BIR Form 1905), which must be duly received by the former Revenue District Office (RDO).

Moreover, respondent contends that the Court has no jurisdiction to rule on the matter by reason of *litis pendentia*. She claims that when the instant case was filed on May 21, 2014, there is already a pending criminal case before the Department of Justice (DOJ) entitled *Bureau of Internal Revenue vs. Intervet Philippines, Inc.*, with NPS No. XVI-INV-14B-00054, which was filed on February 27, 2014. According to respondent, the parties involved are the same and the cases have the same causes of action such that the filing of the instant case has become unnecessary and vexatious.

Furthermore, respondent asserts that the Court erred when it retroactively applied Revenue Regulations (RR) No. 18-2013 because the one in operation during the taxable year involved is RR No. 12-99.

On the other hand, petitioner notes that respondent failed to comply with the mandatory three-day notice rule embodied in Section 4, Rule 15 of the Rules of Court, which requires that the movant ensures that the adverse party receives a copy of the motion at least three days before the said hearing. Hence, petitioner avers that the instant motion should be expunged from the records of the case due to respondent's violation of the notice and due process requirements prescribed under the Rules of Court.

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[2] Docket, pp. 888-889.

Petitioner further insists that respondent officially recognized the transfers of its registered addresses as shown by the Certificate of Registration (COR) issued by BIR RDO No. 40 on July 23, 2008, and the COR issued by BIR RDO No. 41 on January 22, 2009.

In addition, petitioner claims that the instant Petition for Review may proceed separately and independently from the criminal case against petitioner that is currently pending with the DOJ.

Finally, petitioner contends that whether under RR No. 12-99 or RR No. 18-13, it is clear that petitioner was denied due process when the assessment notices were served at the wrong office address.

Three-Day Notice Rule

Petitioner contends that respondent violated the mandatory three-day notice rule found in Section 4, Rule 15 of the Rules of Court.

In the case of *Jehan Shipping Corporation vs. National Food Authority*[3], the Supreme Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The High Court held:

> "The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. But when the adverse party has actually had the opportunity to be heard, and has indeed been heard through pleadings filed in opposition to the motion, the purpose behind the rule is deemed duly served. The requirements of due process are substantially complied with.
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> xxx xxx xxx
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> This Court has indeed held time and again that, under Sections 4 and 5 of Rule 15 of the Rules of Court,

[3] G.R. No. 159750, December 14, 2005.

> mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
>
> As an integral component of procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.
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> The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. xxx"

Petitioner's mere allegation that it received a copy of the motion only on June 16, 2016, or a day after the hearing date for the motion requested by respondent, without submitting evidence as to the date of its receipt, is not sufficient to expunge the instant Motion for Reconsideration. In this case, petitioner was given a period of ten (10) days from receipt of the Court's Resolution to file a comment on the said motion.[4] In other words, petitioner was given ample time within which to read, prepare a defense, and file its opposition against respondent's motion. Hence, petitioner was given an opportunity to be heard which satisfies the due process requirement.

Hence, the Court will now rule on the other grounds raised by respondent.

Respondent was duly notified of the change in petitioner's address.

[4] Resolution dated July 14, 2016, Docket, p. 900.

As found by this Court in the assailed Decision, records show that in a special meeting of petitioner's Board of Directors on September 24, 2008, a Resolution authorizing the transfer of its business address from its Quezon City office to its Mandaluyong City office was adopted.[5] Despite respondent's recognition of petitioner's new address, the PAN, FLD, and Preliminary Collection Notice issued on December 28, 2009, January 15, 2010, and April 22, 2010, respectively, were sent to petitioner's former address at the Pasig City office as indicated in the notices.[6]

Records show that no less than the respondent, through BIR RDO No. 41-Mandaluyong, issued the COR on January 22, 2009, reflecting petitioner's Mandaluyong City office as its registered address.[7] Petitioner presented, among others, the said Board Resolution[8], Letter to BIR RDO 40 dated November 28, 2008 with BIR stamp of receipt,[9] BIR Form No. 1905 with BIR stamp of receipt,[10] Notarized Transfer Commitment Form,[11] Verification Slip for Transfer of Business Registration,[12] and the COR dated January 22, 2009[13], showing that respondent has knowledge of the change in petitioner's address.

From the foregoing, it can be observed that petitioner was able to prove that respondent was duly informed of, and acknowledged the change in petitioner's address.

CTA has jurisdiction.

In its motion, respondent argues for the first time that the case should have been dismissed for lack of jurisdiction based on the principle of *litis pendentia*.

In the instant motion, respondent alleges that:

> "When the instant case was filed on May 21, 2014 docketed as CTA Case no. 8815, there is already a

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5 Decision, Docket, p. 874; Exhibit "P-3-25".
6 Decision, Docket, p. 886.
7 Decision, Docket, p. 874; Exhibit "P-3-30".
8 Exhibit "P-3-25".
9 Exhibit "P-3-22".
10 Exhibit "P-3-23".
11 Exhibit "P-3-28".
12 Exhibit "P-3-29".
13 Exhibit "P-3-30".

> pending Criminal Case [with] entitled 'Bureau of Internal Revenue vs. Intervet Philippines, Inc." with NPS no. XVI-INV-14B-00054 before the Department of Justice. The said criminal case was filed on February 27, 2014.
>
> It must be noted that the parties involved are the same and the cases involved have the same causes of action, such that the filing of the instant case becomes unnecessary and vexatious."[14]

The civil action for the recovery of civil liability for taxes and penalties, corresponding to and deemed instituted with the criminal action under Section 7(b)(1) of Republic Act No. 9282, is different from the civil action by a taxpayer under Section 228 of the National Internal Revenue Code of 1997. This was the ruling of the CTA *En Banc* in the case of *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*,[15] to wit:

> "A careful reading of Section 7(b)(1) of R.A. No. 9282 would establish that the civil action deemed instituted with the criminal action is not just any civil action, but 'the *corresponding* civil action for the recovery of civil liability for taxes and penalties.' Clearly, what this provision contemplates is not a civil action by the taxpayer, but by the taxing authority on whose behalf a criminal action is filed.
>
> This civil action is akin to, if not the same as, that covered by Section 220 of the NIRC, which states in part that no civil action *instituted in behalf of the Government* for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under the Code shall be filed in court without the approval of the Commissioner of Internal Revenue. Section 254 of the NIRC also states that in a criminal action for an attempt to evade or defeat tax, 'the conviction or acquittal obtained under this Section shall not be a bar to the filing of a *civil suit for the collection of taxes*.'
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> xxx xxx xxx

[14] Respondent's Motion for Reconsideration, Docket, p. 895.
[15] CTA EB Crim. Case No. 026, December 22, 2014.

The First Division, in its Resolution of 01 March 2013, further explained why the petitioner's civil action against the FDDA was 'not deemed instituted' in the two criminal cases: 'it entails different procedural requirements mandated under Section 228 of the NIRC of 1997, in relation to Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282.'

Petitioner confused himself by construing the 'civil action' mentioned in Section 7(b)(1) of R.A. No. 9282 *out of context*. Properly read, that civil action must *correspond* to or with the criminal action — which would exclude any other civil action. The civil action under Section 7(b)(1) of R.A. No. 9282 is necessarily one initiated and prosecuted by the People, for the recovery of civil liabilities *from* the accused — rather than a civil action *by* the accused, against State. Conceivably, the accused can pray for civil remedies, through his Answer, by way of a counterclaim, and thus dispense with the need to file a separate civil action, but if his counterclaim is permissive it will be subject to the payment of legal fees, the rule in permissive counterclaims being that 'for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees.'

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It is crystal clear that the petitioner deliberately blurred the distinctions between, <u>first</u>, a civil action for the recovery of civil liability for taxes and penalties, corresponding to and deemed instituted with the criminal action under Section 7(b)(1) of R.A. No. 9282, without need for the payment of docket fees, and, <u>second</u>, a civil action by a taxpayer under Section 228 of the NIRC. By so mixing oil and water, he would want this Court to rule that the second type of civil action, which is his Petition for Review *Ad Cautelam* against the FDDA, should be deemed instituted with Criminal Cases Nos. O-206 and O-207 and thereby be exempted from the payment of docket fees."

Considering the foregoing ruling, respondent's argument on *litis pendentia* must fail.

Application of RR No. 18-2013.

Respondent posits that the Court erred when it retroactively applied RR No. 18-2013.

As correctly mentioned by petitioner in its comment, an examination of the provisions of RR No. 18-13[16], as quoted in the assailed Decision, would show no substantial changes from the amended counterparts in RR No. 12-99. Still, both the PAN and FAN are part of due process requirement in the issuance of deficiency tax assessment.

In view of the foregoing, there is no cogent reason to reverse the Court's findings and conclusions in the assailed Decision. The assessments against petitioner covering income tax, value-added tax, expanded withholding tax, and compromise penalty in the total

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[16] **SECTION 3.** *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX "B" hereof).

amount of ₱49,139,464.50, inclusive of interest, for taxable year 2006 should be cancelled and withdrawn.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice