REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CHEVRON SERVICES PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9571

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 17 2021
4:08 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is respondent's **Motion for Reconsideration (of the Decision dated 15 July 2020)** filed through registered mail on August 28, 2020 and received by the Court on September 7, 2020, with petitioner's **Comment (Re: Motion for Reconsideration dated August 28, 2020)** filed on November 16, 2020.

On July 15, 2020, the Court promulgated a Decision cancelling respondent's deficiency tax assessments for failing to issue a Letter of Authority (LOA) and violating petitioner's right to due process of law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.
>
> Accordingly, the *Final Denial Letter* dated March 1, 2017 issued by Regional Director Glen A. Geraldino against petitioner is hereby **REVERSED and SET ASIDE**. Furthermore, the FAN, assessing petitioner of the deficiency income tax and VAT, in the aggregate amount of ₱52,292,668.88, inclusive of interest and surcharges, for the CY 2011, is **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In his Motion, respondent prays that the above Decision be reconsidered, raising the following grounds as his main arguments, *viz.*:

1. The Formal Assessment Notice (FAN) was received by the petitioner on December 22, 2016, and not January 3, 2017;

2. This Court has no jurisdiction over the instant Petition;

3. Respondent fully complied with the due process requirement under Section 228 of the National Internal Revenue Code, as amended, by Revenue Regulations (RR) No. 12-1999 and RR No. 18-2013;

4. The principle of estoppel prevents a person from maintaining a position inconsistent with one in which he has acquiesced; and,

5. Administrative authorities should be allowed the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

As to the first ground, respondent insists that the FAN was received by petitioner on December 22, 2016 and the person who received the same, Mr. Richard Intalan, was indeed duly authorized to receive for and in behalf of petitioner. Respondent argues that there is nothing on record, other than the Certification dated September 20, 2017, which would show that petitioner presented concrete evidence to prove that it did not really receive the said FAN on December 22, 2016. He continues that petitioner in fact failed to present Mr. Intalan as witness to testify that he was not authorized or given permission to receive the said FAN or had no instances in the past that he received notices/documents on behalf of petitioner. Respondent cites the cases of *Scenarios, Inc., et al. v. Jelly Vinluan*[1] *("Scenarios case")* and *Land Bank of the Philippines v. Heirs of Fernando Alsua, et al.,*[2] *("Land bank case")* to bolster its claim.

With regard to the second ground, respondent claims that perusal of the Bureau of Internal Revenue (BIR) Records would show that the subject FAN dated December 20, 2016 was personally served to and received by petitioner on December 22, 2016. As such, it has thirty (30) days from receipt of the said FAN, or until January 21, 2017, within which to file an administrative protest with the BIR, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997 and Section 3.1.5, paragraph 4 of RR No. 12-99, as amended. However, petitioner's Letter of Protest against the FAN was only filed on February 2, 2017, which was beyond the said 30-day period. In the same vein, respondent further continues that the filing of the present Petition was likewise

[1] G.R. No. 173283, September 17, 2008.
[2] G.R. No. 167361, April 2, 2007.

belatedly filed on April 10, 2017. As such, the deficiency income tax and value-added tax assessments have already become final, executory and demandable, thereby precluding petitioner from disputing the correctness of the subject assessments, and barring petitioner from filing any judicial appeal before this Court.

As to the third ground, respondent claims that petitioner was never deprived of its right to due process as it was fully apprised of the legal and factual bases of the assessments issued against it. He asserts that petitioner was in fact afforded sufficient opportunity to contradict the findings in the said assessments – which it did –through its letter of protest to the Preliminary Assessment Notice (PAN) dated December 9, 2016 and letter of protest to the FAN dated February 2, 2017. Respondent continues that so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with. Also, respondent avers that the issuance of PAN is not indispensable and failure on the part of the taxpayer to file its protest thereon would not result in the finality of the assessment.

Anent the fourth ground, respondent argues that petitioner, in the present Petition or in any of its protest letters filed with the BIR, never questioned the validity of LOA and the supposed lack of authority of the individual to receive the FAN on its behalf. Thus, respondent submits that this Court should deem petitioner estopped from questioning the absence of an LOA and the alleged lack of authority of Mr. Intalan to receive the FAN at the administrative level.

Lastly, with regard to the fifth ground, respondent invokes the principle of prior exhaustion of administrative remedies, whereby questions or issues not raised in the administrative level cannot be raised for the first time on appeal in the judicial level. To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum.

On the other hand, in its Comment, petitioner cites the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.,*[3] wherein it was held by the Supreme Court that the burden of proof to show that substituted service was validly made lies with the sender to prove that the mailed letter was, in fact, received by the addressee. More so, petitioner reiterates the findings of the Court that the subject FAN was not validly served upon petitioner as the recipient thereof, Mr. Intalan, is neither petitioner's clerk nor a person having charge of petitioner's registered or known address.

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[3] G.R. No. 202695, February 29, 2016.

Petitioner further submits that the cited cases of *Scenarios* and *Land bank* are inapplicable herein since the *Scenarios case* refers to summons and notices served by the Labor Arbiter in a labor case, and the *Land bank case* refers to service of the order of dismissal made by the National Labor Relations Commission. Also the mode of service resorted to in the *Land bank case* was registered mail not substituted service, as in the present case.

Furthermore, petitioner claims that respondent's letter dated December 28, 2016 states that he merely acknowledged the receipt of petitioner's Reply to the PAN, and that the same will only form part of the docket because the FAN dated December 20, 2016 had already been issued against petitioner. For this reason, the Court ruled that respondent violated its right to due process when he failed to consider petitioner's Reply to the PAN before issuing the subject FAN. Petitioner likewise insists that the service of the PAN to a taxpayer is a substantive (not merely a formal) requirement pursuant to Section 228 of the NIRC of 1997, as amended.

Lastly, petitioner asserts that this Court may rule on issues not previously raised by the parties in their pleadings or memoranda, pursuant to Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA),[4] and such legal authority was even affirmed by the High Court in the cases of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[5] and *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*[6]

This Court finds respondent's Motion for Reconsideration bereft of merit.

At the outset, the instant Motion was filed out of time. Perusal of the records of the present case will readily show that the Decision dated July 15, 2020 was received by respondent on July 29, 2020. From there, respondent has fifteen (15) days, or until August 13, 2020, within which to file a motion for reconsideration. However, the instant Motion was only filed on August 28, 2020.

Believing that his Motion for Reconsideration was timely filed, respondent argues that since the said period fell on the suspension of the reglementary period for the filing of, among others, motions pursuant to Supreme Court (SC) Administrative Circular No. 43A-2020 dated August 3, 2020, he therefore has until August 28, 2020 within which to file his motion. In effect, respondent claims that he has a fresh period of fifteen (15) days from August 13, 2020 within which to file his Motion for Reconsideration.

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[4] A.M. No. 05-11-07-CTA, November 22, 2005.
[5] G.R. No. 183408, July 12, 2017.
[6] G.R. No. 163835, July 7, 2010.

Unfortunately, respondent's interpretation of the SC circular is erroneous.

To recapitulate, due to the rising cases affected by the 2019 Coronavirus Disease (COVID-19), the Supreme Court issued Administrative Circular No. 43-2020 on August 2, 2020, declaring the physical closure of courts in areas under Enhanced Community Quarantine or Modified Enhanced Community Quarantine from August 3 to 14, 2020, but the court operations however shall continue to receive petitions and pleadings electronically and shall continue to resolve and decide cases pending before them, the relevant portion of which is quoted hereafter as follows:

> "Due to the reported surge in Covid-19 cases, the Court en banc has provided the following guidelines in the operation of the courts **from 3 — 14 August 2020**:
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> 1. Unless here provided, ALL the courts in the National Capital Judicial Region, and those in areas under Enhanced Community Quarantine or Modified Enhanced Community Quarantine, **SHALL BE PHYSICALLY CLOSED to all court users**, and shall only be reached through their respective hotline numbers, email addresses and/or Facebook accounts as posted on the website of the Supreme Court. x x x
>
> -x x x-
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> 5. The Court of Appeals, Sandiganbayan, and **Court of Tax Appeals shall continue to receive petitions and pleadings electronically**, and in accordance with Paragraph 1 herein, and process the same pursuant to their respective internal rules.
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> 6. The Court of Appeals, Sandiganbayan, and **Court of Tax Appeals shall continue to resolve and decide cases pending before them. Regular hearings shall be conducted through videoconferencing**." *(Emphases supplied)*

On the next day, an addendum to the above mentioned circular, Administrative Circular No. 43A-2020, was issued by the Supreme Court modifying the suspension of the reglementary periods for the filing of petitions, appeals, complaints, **motions**, pleadings and other court submissions before the courts from August 4 to 18, 2020, and shall resume on August 19, 2020, to wit:

> "In view of the imposition of Modified Enhance Community Quarantine (MECQ) in Metro Manila, Cavite, Rizal,

Bulacan and Laguna from 4 to 18 August 2020, and in addition to the provisions of Administrative Circular No. 43-2020 [inadvertently numbered as A.C. No. 42-2020] dated 2 August 2020, the court in the said areas during the period of 4 to 18 August 2020, shall also observe, as follows:

1. The reglementary periods for the filing of petitions, appeals, complaints, motions, pleadings and other court submissions before the courts **shall be suspended from 4 to 18 August 2020, and shall resume on 19 August 2020**, without prejudice to those who have already filed such pleadings and documents within the reglementary periods. In the same manner, the periods for court actions with prescribed periods are likewise suspended, and shall resume on 19 August 2020.

2. Administrative Circular No. 43-2020 *[inadvertently numbered as A.C. No. 42-2020]* shall be extended until 18 August 2020.

All previously issued circulars and their respective provisions which are not inconsistent herewith shall remain valid and in effect." *(Emphases supplied)*

From the foregoing circulars, it is clear that while the Court of Tax Appeals (CTA) was physically closed to court users from August 3 to 18, 2020, it shall nonetheless continue to receive petitions and pleadings electronically and will continue to resolve and decide cases pending before them during the said period, including hearings conducted through videoconferencing.

Evidently, there is no basis for respondent to presume that he had a fresh period of fifteen (15) days from August 13, 2020, the supposed last day for him to file his Motion for Reconsideration. Instead, respondent should have submitted his Motion either via electronic mail or on the date the Court resumed its operation on August 19, 2020. By filing the instant Motion for Reconsideration on August 28, 2020, respondent is deemed to have belatedly filed the said Motion.

At any rate, assuming arguendo that the instant Motion is admitted and considered, the same would still fail on the merits considering that the arguments raised therein shows that they are mere rehashes of the same facts and issues which have already been extensively discussed in the Decision it assails.

To reiterate, paragraph 3.1.6(iii), Section 3 of RR No. 12-99, as amended by RR No. 18-2013, provides that substituted service may be resorted to when the taxpayer is not present at the latter's registered or known address **by**

leaving the notice to the taxpayer's clerk or with a person having charge thereof of the place where the business activities of the taxpayer are conducted.

In the present case, respondent's witness Revenue Officer (RO) Florentino A. Guarino III, during his cross-examination, testified that he served the FAN to Mr. Richard Intalan on December 22, 2016, despite having knowledge that the latter is an employee of Chevron Philippines, Inc., which a separate and distinct entity from petitioner.[7] This fact was further confirmed by Mr. Intalan's employer, Facilities Managers, Inc., when it issued a Certification dated September 20, 2017,[8] attesting that Mr. Intalan is connected to Chevron Philippines, Inc., and not with petitioner. As such, Mr. Intalan cannot be considered as a clerk of petitioner or one who has charged of the place of business of the latter. Consequently, this Court considers January 3, 2017, when service of the FAN was effected through registered mail, as the date of receipt of petitioner.

Moreover, this Court likewise does not find the doctrinal pronouncements in the *Scenarios case* and *Land bank case* applicable herein as the facts in the said cases are not on all fours with the present case.

In *Scenarios case*, summons and notices of hearing were issued and sent *via* registered mail at petitioner's registered business address. After denying their receipt, the Supreme Court ruled "the postal office certifications are *prima facie* proof that the said processes had been delivered to and received by petitioners. The presumption of regularity in the performance of official duty stands." Notably, the High Court relied on Section 5 of the New National Labor Relations Commission Rules of Procedure in serving notices and summons, wherein it states that service by registered mail is complete after five (5) days from the date of first notice of the postmaster in the event that the addressee fails to claim his registered mail from the post office. In contrast, the present case involves a substituted mode of service and not through registered mail, which is allowed under Section 3.1.6 of RR No. 12-99.

While, in the *Land bank case* it has been established that the security guard who received the copy of the order of dismissal *via* registered mail had been accustomed to the responsibility of receiving papers on behalf of petitioner, and such fact was even admitted by the petitioner itself. On the other hand, in the present case, no proof was presented by respondent showing that Mr. Intalan had been accustomed to the responsibility of receiving papers or communication letters for and in behalf of petitioner. Neither was there an admission on the part of petitioner that it authorized Mr. Intalan to receive any papers or documents on its behalf.

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[7] *Transcript of Stenographic Notes* dated October 18, 2018, pp. 14 to 16.
[8] Exhibit "P-12", Docket – Vol. II, p. 636.

Anent the issue of the PAN, this Court reiterates that it is mandatory for respondent to furnish the taxpayer with a PAN, to give the taxpayer the opportunity to file its protest thereon within fifteen (15) days from receipt thereof, and to consider the taxpayer's explanation in its protest to the PAN before issuing the FAN.[9] Thus, the premature issuance of the FAN, prior to the lapse of the 15-day period given to it to file its reply to the PAN, violates the taxpayer's right to due process. In the case of *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation),*[10] the Supreme Court emphasized that the PAN is part of due process requirement to which the CIR must strictly comply, thus:

> "Succinctly put, if it was determined that there exists sufficient basis to assess the taxpayer for deficiency taxes, **the CIR or her duly authorized representative shall issue to the taxpayer a Preliminary Assessment Notice (PAN), to which the taxpayer is required to respond. Upon receipt of the PAN, the taxpayer is granted fifteen (15) days, within which to file a reply.** If he fails to do so within the prescribed period, he shall be considered in default and only then shall the CIR or her duly authorized representative issue an FLD/FAN, calling for the payment of the assessed deficiency tax liability, surcharges and penalties.
>
> Clearly, due process demands that the taxpayer receives the PAN **and** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond 'opportunity to be heard' as an aspect of due process. In said case, the Court, reiterating Ang Tibay v. The Court of Industrial Relations, held that **'[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts *but the [CIR] must consider the evidence presented.*'** (Emphases supplied)

Also, this Court further emphasizes that Section 1, Rule 14 of the RRCTA, explicitly states that in deciding cases, the CTA may not limit itself to the issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case. It is for such reason that the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,*[11] categorically ruled that the CTA can resolve the issue involving the authority of the RO to conduct the audit, although the same was not raised by the parties in their pleadings or memoranda, to wit:

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[9] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018.
[10] G.R. No. 227616, June 19, 2019.
[11] G.R. No. 183408, July 12, 2017.

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. Rendition of judgment. — x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

Apparently, the Court in Division can validly consider, in its Decision, issues that were not raised by any of the parties. It also equally bears noting that the authority of the Revenue Officers to conduct audit investigation goes into the issue of the validity of the assessment itself. As such, any assessment arising from the examination of a taxpayer's books of accounts by a Revenue Officer who is not duly authorized to do so, is inescapably void, following the oft-repeated rule that "a void assessment bears no valid fruit."[12]

Accordingly, it is of no consequence that the issue on the alleged want of authority of the Revenue Officer was never raised in any pleadings filed before this Court. The same rationale holds true to respondent's last argument that administrative authorities should be allowed the prior opportunity to decide controversies within its competence since it has been settled that this Court can also rule upon related issues necessary to achieve an orderly disposition of a case.

Based on the foregoing disquisitions, the Court finds no justifiable reason to change or modify the assailed Decision.

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[12] *Commissioner of Internal Revenue v. Azucena T. Reyes, et seq.,* G.R. Nos. 159694 and 163581, January 27, 2006.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (of the Decision dated 15 July 2020) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice