REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LIQUIGAZ PHILIPPINES CORPORATION,
Respondent.

CTA EB NO. 989
(CTA Case No. 8141)

x- x

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 990
(CTA Case No. 8141)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

NOV 26 2014
4:05 p.m.

x- -x

RESOLUTION

COTANGCO-MANALASTAS, *J.*:

For resolution are the following incidents:

I. *Motion for Partial Reconsideration*[1] filed by Liquigaz Philippines Corporation (Liquigaz), by counsel, on June 17, 2014; and

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[1] *Rollo*, pp. 179-193.

II. *Motion for Partial Reconsideration (Re: Decision dated May 22, 2014)* [2] filed by the Commissioner of Internal Revenue (CIR), by counsel, on June 18, 2014.

I. Motion for Partial Reconsideration[3] *of Liquigaz*

In its *Motion for Partial Reconsideration* [4], Liquigaz prays that the May 22, 2014 *Decision*[5] of this Court be partially reconsidered and that the Final Decision on Disputed Assessment (FDDA) be declared null and void. Liquigaz interposes the following grounds for reconsideration: [1] the Final Decision on Disputed Assessment (FDDA) should be nullified and cancelled for being erroneous and devoid of factual and legal basis; [2] the discrepancy between the amount of salaries and wages in Liquigaz's income tax return (ITR) and the amount of taxable compensation in its alphalist does not prima facie establish factual basis for deficiency withholding tax on compensation.

Anent the first ground, Liquigaz stresses that: the FDDA contains no explanation as to how the CIR arrived at the assessment; the CIR did not even bother to examine the voluminous documents submitted by Liquigaz to support its protest, *i.e., ITR, Audited Financial Statement, Schedule of de minimis benefits, invoices, vouchers, and official receipts issued therefore*; and that the principle of due process does not only apply to judicial cases but likewise to cases administrative in nature.

As regards the second ground, Liquigaz explains that: the liability for deficiency withholding tax on compensation cannot be based on mere discrepancy between the reported ITR and the Alphalist, it must be based on the discrepancy on the amount of taxable compensation income based on the taxpayer's records and the Alphalist; the amount provided in the ITR is the gross amount of the salaries and wages, while the amount in the Alphalist shows the taxable compensation income which was arrived at after deducting the items excluded/exempted from the computation of the taxable compensation income; the amount of salaries stated in

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[2] *Rollo*, pp. 195-203.
[3] *Supra*, Note 1.
[4] *Supra*.
[5] *Rollo*, pp. 149-172.

Liquigaz's ITR also includes *de minimis* benefits, such as personnel party, games, canteen costs, working clothes of employees, accrued bonuses, and 13th month pay, which are not income payments subject to withholding tax; and that the assessment issued by the CIR likewise show that it includes the salaries of minimum wage earners which are exempt from withholding tax.

On September 11, 2014, a *Comment (To Respondent's Motion for Partial Reconsideration)* was filed by the CIR arguing that Liquigaz was sufficiently informed about the factual basis of the assessment for deficiency withholding tax on compensation; the statute does not require any alleged detailed explanation of the facts and the law in the FDDA; as to the matter that such explanation requirement was stated in RR 12-99, such subordinate legislation should not be allowed to override the law; even assuming the statute permits this explanation, the items and figures in the FDDA can be traced and verified in the details of discrepancies in the PAN and FLD/FAN, thus, it cannot be said that Liquigaz had no way of knowing what items were considered by the CIR in making the assessments.

In response thereto, a *Reply To Petitioner's Comment Dated 10 September 2014* was filed by Liquigaz on October 2, 2014. In said *Reply*, Liquigaz insists that: the due process requirement under Section 228 of the Tax Code, as amended, applies to Final Decision on Disputed Assessment; and that Liquigaz has sufficiently explained the discrepancy in the CIR's assessment.

The *Motion for Partial Reconsideration*[6] of Liquigaz must fail.

First, the Court notes that Liquigaz's *Motion* does not contain a notice of hearing, and thus, failed to comply with Sections 4 and 5 of Rule 15 of the Rules of Court. 'It is an elementary doctrine that a motion, without notice and hearing, is *pro forma*, a mere scrap of paper that cannot be acted upon by the court. It presents no question which the court can decide. The court has no reason to consider it, and the clerk has no right to receive it.'[7]

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[6] *Supra*, Note 1.
[7] *Solar Resources, Inc., vs. Inland Trailways, Inc.*, G.R. No. 173566, July 4, 2008.

Second, albeit the rules on the inclusion of notice of hearing in motions are not strictly applied in this instance, Liquigaz's *Motion* must still fail as the grounds relied upon by Liquigaz in its *Motion* are mere reiteration of its previous arguments and issues already passed upon and resolved by this Court in the assailed *Decision*[8] dated May 22, 2014.

This Court firmly stands by its pronouncement that the portions of the FDDA relating to the assessed deficiency withholding tax on compensation are valid as Liquigaz was sufficiently informed about the factual basis of the assessment for deficiency withholding tax on compensation. Liquigaz failed to specify how much of the salaries account pertain to *de minimis* benefits, accrued bonuses, salaries and wages, and contributions to SSS, Medicare, and Pag-ibig Fund. To recapitulate, below is an excerpt of the assailed *Decision*[9]:

> "Thus, We affirm the Division's ruling that the portions of the FDDA relating to the assessed deficiency expanded withholding tax and fringe benefits tax are void.
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> As to the assessment for deficiency withholding tax on compensation, We find that the basis for the assessment was the same for the FLD and the FDDA. That is, comparing the declared Salaries per ITR in the amount of P52,239,313.00, and Salaries per Alphalist which reflected only P4 2, 921,05 7. 16, would give rise to a discrepancy of P9,318,255.84, which was the basis for the assessment in both the FLD and the FDDA. The change in the amount of assessed deficiency withholding taxes on compensation simply arose from the revision of the tax rate used. xxx.
>
> In this instance, there is no question about the source of the figures used in determining the deficiency withholding tax on compensation. Thus, respondent was sufficiently informed about the factual basis of the assessment for deficiency withholding tax on compensation.
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> Respondent explained that "[t]he amount reported in the ITR and that stated in the Alphalist will not be equal because [the] amount in the former reflects the gross amount of salaries while the amount in the latter shows the *taxable* compensation income which is arrived at after deductions and exemptions applicable to the former have been deducted.

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[8] *Supra*, Note 5.
[9] *Supra*, Note 5.

However, respondent failed to specify how much of the salaries account pertain to *de minimis* benefits, accrued bonuses, salaries and wages, and contributions to SSS, Medicare and Pag-Ibig Fund. Even the Court-commissioned independent CPA reported that respondent was not able to substantiate the discrepancy found by petitioner on respondent's withholding tax liability on compensation."

Thus, We uphold the assessment for deficiency withholding tax on compensation."

II. *Motion for Partial Reconsideration (Re: Decision dated May 22, 2014)*[10] *of the Commissioner of Internal Revenue*

In the CIR's *Motion for Partial Reconsideration (Re: Decision dated May 22, 2014)*[11], the CIR claims that the FDDA issued against Liquigaz is valid. In support of her claim, the CIR argues that the provision under Section 228 of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) mandating that taxpayers be informed of the law and facts on which assessment is made, does not pertain to the FDDA but to the Final Assessment Notice (FAN); the Preliminary Assessment Notice (PAN), FAN, and even Formal Letter of Demand (FLD) issued by the CIR indicated the facts and law on which the assessment is based; contrary to Liquigaz's allegation, the items and figures contained in the FDDA can be traced, identified, and verified in the details of discrepancies reflected in the PAN and FLD/FAN; and that Liquigaz's act of filing a protest letter belies its claim that it was deprived of due process, as long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.

On July 3, 2014, Liquigaz filed its *Comment/Opposition [To Petitioner's Motion for Partial Reconsideration]*[12]. In said *Comment*, Liquigaz insists that: [i] the requirements of Section 228 of the 1997 NIRC as implemented by Revenue Regulations No. 12-99 on the statement of the factual and legal bases of an assessment applies to the FDDA; and [ii] the fundamental and essential requirements of due process were not observed by the CIR in issuing the FDDA.

[10] *Supra*, Note 2.
[11] *Supra*.
[12] *Rollo*, pp. 205-214.

The CIR's *Motion for Partial Reconsideration (Re: Decision dated May 22, 2014)*[13] is devoid of merit. CIR's arguments in the subject *Motion* are rehash of the previous arguments submitted for the consideration of the Court in Division and of the Court *En Banc*, which had been resolved by this Court in the assailed *Decision*[14] dated May 22, 2014.

As discussed in the assailed *Decision*[15], the portions of the FDDA relating to the assessed deficiency expanded withholding tax and fringe benefits tax are void as the said portions do not have the accompanying schedule to detail how the said amounts were arrived at, *viz*:

> We affirm the Division's ruling that the requirement that "the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void" applies to the FDDA. Indeed, it is the FDDA which will determine the final tax liability of the taxpayer which may be the subject of appeal before the Court of Tax Appeals.
>
> xxx
>
> In the instant case, while petitioner's FDDA indicated the legal provisions relied upon for the assessment, the basis or the source of the amounts from which the assessments arose were not shown.
>
> <u>The need for stating the factual basis, i.e. for specifying the source of the amounts used in the assessment, gains more prominence in the instant case, where the FDDA reflects different amounts than that contained in the Formal Assessment Notice</u>, xxx:
>
> An examination of the FDDA reveals that it does not have an accompanying schedule to detail how the said amounts were arrived at. The taxpayer, and this Court, cannot determine whether the protest filed against the FLD was considered in the assessments contained in the FDDA. Furthermore, without the statement of the factual basis, or details of the assessment, the FDDA suffers from the appearance of being a mere arbitrary reduction of the assessments previously reflected in the FLD. This failure to present the factual basis of the assessment cannot be countenanced by the Court. Thus, We affirm the Division's ruling that the portions of the FDDA relating to the assessed

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[13] *Supra*, Note 2.
[14] *Supra*, Note 5.
[15] *Supra*.

deficiency expanded withholding tax and fringe benefits tax are void."

WHEREFORE, premises considered, the *Motion for Partial Reconsideration*[16] filed by Liquigaz and the *Motion for Partial Reconsideration (Re: Decision dated May 22, 2014)*[17] filed by the CIR are hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR: I maintain my concurring and dissenting opinion dated 22 May 2014.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

I maintain my dissenting opinion dated 22 May 2014.
Ma. Belen
MA. BELEN RINGPIS-LIBAN
Associate Justice

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[16] *Supra*, Note 1.
[17] *Supra*, Note 2.