REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ABUNDANCE PROVIDERS AND ENTREPRENEURS CORPORATION,
Respondent.

CTA EB No. 999
(CTA Case No.8040)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 04 2015
1:45 p.m.

x - x

RESOLUTION

UY, J.:

This resolves petitioner's **"MOTION FOR RECONSIDERATION"** filed on September 30, 2014 with respondent's **"COMMENT/OPPOSITION [Re: *Motion for Reconsideration* dated 30 September 2014]"** filed on November 17, 2014, seeking the reconsideration and setting aside of Our Decision promulgated on August 18, 2014, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Resolution dated October 31, 2012 and Resolution dated March 11, 2013, both rendered by the

Third Division of this Court in CTA Case No. 8040 are hereby **AFFIRMED**.

SO ORDERED."

In support of her Motion for Reconsideration, petitioner raises the following arguments, to wit:

1. The Third Division of this Court has no jurisdiction to act on the Petition for Review of respondent in CTA Case No. 8040.

   Citing as basis the case of *Commissioner of Internal Revenue vs. Algue, Inc.* (hereinafter referred to as the "*Algue* case"),[1] petitioner contends that following the rule that the issuance of the subject Warrant of Distraint and/or Levy dated February 11, 2010 by petitioner CIR to the herein respondent, on February 22, 2010, is a proof of finality of its delinquent value-added tax (VAT) liability for taxable year 2001, and is tantamount to an outright denial of its request for reconsideration and makes the said request as deemed rejected, therefore, the issuance of the Commissioner of Internal Revenue of her Decision dated December 7, 2010, was deemed as moot and academic.

   Furthermore, petitioner points out that judicial appeal of respondent with this Court has already prescribed, considering that its Petition for Review in CTA Case No. 8040 was filed only on March 23, 2010, or long after the 30 days statutory period to appeal had lapsed counting from respondent's receipt of the Decision dated May 27, 2004 on July 15, 2004.

2. The Court *a quo* clearly failed to exclude the period during the time when the right of the BIR to collect was interrupted/suspended. *First*, during the time when respondent executed a Waiver of the Defense of Prescription of the Statute of Limitations under the National Internal Revenue Code (NIRC) until October 15, 2004, since petitioner was prohibited from beginning distraint or levy, pursuant to Sections 222(d) and 223 of the 1997 Tax Code. And *second*, during the time when respondent filed a Letter dated July 16, 2004 and Letter dated February 1, 2005, where respondent in both letters purposely requested the Appellate Division of the Bureau of Internal Revenue (BIR) to hold in abeyance pending action/resolution by respondent of the industry issue it raised involving the VAT on trust fund contributions of pre-need companies under RMC 13-96 (which requires that the contribution of the trust fund

[1] 158 SCRA 9 (1988).

must be indicated in the VAT Official Receipts), until such time respondent issued BIR Ruling No. DA-027-2006, on January 31, 2006.

On the other hand, respondent, in it its Comment/Opposition, argues that the motion for reconsideration is a mere reiteration or rehash of previous arguments already passed upon and should be denied outright because it is *pro forma*. Respondent asserts that the *Court En Banc* correctly affirmed the Resolutions dated October 31, 2012 and March 11, 2014 by the Third Division.

THE RULING OF THE COURT *EN BANC*

Petitioner's Motion for Reconsideration lacks merit.

After a careful examination and comparison of the instant Petition for Review and the said Motion for Reconsideration, it is here noted that the reasons and arguments raised in the latter are mere reiterations set forth in the former which have already been considered, weighed and resolved in the assailed Decision.

Nevertheless, We shall again address the arguments raised by petitioner in the instant Motion for Reconsideration.

The Third Division of this Court has jurisdiction.

Petitioner primarily cites the *Algue* case[2] to justify its conclusion that the subject Warrant of Distraint and/or Levy dated February 11, 2010 by petitioner to herein respondent, on February 22, 2010, is a proof of finality of its delinquent value-added tax (VAT) liability for taxable year 2001, and is tantamount to an outright denial of its request for reconsideration, thereby rendering her Decision dated December 7, 2010 as moot and academic.

Petitioner's reliance in the said case is misplaced.

In the *Algue* case, the Supreme Court said:

> "xxx. It is true that as a rule the warrant of distraint and levy is 'proof of the finality of the assessment' and

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[2] G.R. No. L-28896, February 17, 1988.

> 'renders hopeless a request for reconsideration,' being 'tantamount to an outright denial thereof and makes the said request deemed rejected.' But there is a special circumstance in the case at bar that prevents application of this accepted doctrine.
>
> The proven fact is that four days after the private respondent received the petitioner's notice of assessment, it filed its letter of protest. This was apparently not taken into account before the warrant of distraint and levy was issued; indeed, such protest could not be located in the office of the petitioner. It was only after Atty. Guevara gave the BIR a copy of the protest that it was, if at all, considered by the tax authorities. During the intervening period, the warrant was premature and could therefore not be served.
>
> As the Court of Tax Appeals correctly noted, the protest filed by private respondent was not *pro forma* and was based on strong legal considerations. It thus had the effect of suspending on January 18, 1965, when it was filed, the reglementary period which started on the date the assessment was received, *viz.*, January 14, 1965. **The period started running again only on April 7, 1965, when the private respondent was definitely informed of the implied rejection of the said protest and the warrant was finally served on it. Hence, when the appeal was filed on April 23, 1965, only 20 days of the reglementary period had been consumed.**" *(Emphases supplied)*

Thus, while it may be true that the *Algue* case provided an unusual way of computing the 30-day reglementary period of filing an appeal before this Court, the fact remains that the Supreme Court recognized that the said period, albeit may be suspended under the factual milieu of the *Algue* case, commenced to run only when *"the warrant was finally served on"* the taxpayer, purporting that the said warrant constitutes as the final decision of the Commissioner of Internal Revenue. Correspondingly, the phrases *"proof of finality of the assessment"* and *"renders hopeless a request for reconsideration"* should not be taken to mean that the taxpayer is absolutely deprived of remedy, and that the subject assessment has already and absolutely become *"final, executory and non-appealable"*. This must be so because the word *"finality"* may be taken in the context of, or is akin to, finality of the decision of the Commissioner of Internal Revenue, *i.e.*, that which already appealable to this Court, as enunciated in *Oceanic Wireless Network,* *Inc. vs. Commissioner of Internal Revenue, et al.*,[3] to wit:

> "A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. **The determination on whether or not a demand letter is <u>final</u> is conditioned upon the language used or the tenor of the letter bring sent to the taxpayer**.
>
> **We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his <u>final determination</u> of the disputed assessment**, thus:
>
> > . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. **On the basis of his statement indubitably showing the Commissioner's communicated action is his <u>final decision on the contested assessment</u>, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.**
> >
> > **The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the <u>finality of the assessment</u>** – and, consequently, the collection of the amount demanded as taxes – by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action." *(Emphases and underscoring supplied)*

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[3] G.R. No. 148380, December 9, 2005.

Parenthetically, it is noteworthy that the mandate of the foregoing pronouncements is never adhered to by the BIR in this case.

At any rate, the above pronouncements in the *Algue* case complement the ruling laid down by the Supreme Court in *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue* (hereinafter referred to as the "*Philippine Journalist* case",[4] as We have cited in the assailed Decision, viz:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision[5] covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
>
> This is not the first case where the CTA validly ruled on issues that it did not relate directly to a disputed assessment or a claim for refund. **In *Pantoja v. David*,[6] we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue.** xxx." *(Emphases supplied)*

Thus, once a warrant of distraint/levy has been issued similar to what happened in the *Algue* case, this Court can readily take cognizance of the appeal assailing the warrant by virtue of the above-quoted ruling in the *Philippine Journalist* case.

Moreover, as a corollary to the foregoing disquisitions, We still cannot subscribe to petitioner's stance that respondent's judicial appeal with this Court has already prescribed, since the Petition for Review in CTA Case No. 8040 was filed on March 23, 2010 or long after the 30-day statutory period to appeal had lapsed counting from respondent's receipt of the decision dated May 27, 2004 on July 15, 2004.

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[4] G.R. No. 162852, December 16, 2004.
[5] Referring to Section 7(a)(1) of the Republic Act No. (RA) 1125, as amended by RA 9282.
[6] 111 Phil. 197 (1961).

Again, it is apparent that petitioner is insisting on her wrong notion that the decision dated May 27, 2004 by OIC Deputy Commissioner Estelita C. Aguirre as *"the final act/decision of the BIR"*.

For sure, the said decision dated May 27, 2004 could not have attained finality, pursuant to Section 3 of Revenue Regulations No. 12-99, which provides, in part, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*—
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.*— The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx.
>
> xxx xxx xxx
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, <u>the latter's decision shall not be considered final, executory and demandable</u>, in which case, the protest shall be decided by the Commissioner.**
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

Needless to state, administrative rules and regulations, such as RR 12-99, ordinarily deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.[7] Revenue Regulations or administrative issuances have the force of law and are entitled to great weight.[8]

In addition, in her Decision dated December 7, 2010,[9] petitioner herself deemed that the same is the final act of her Office insofar as the subject assessment, and **not** the decision dated May 27, 2004 by OIC Deputy Commissioner Aguirre, to wit:

> "Before this Office for resolution is the request for reconsideration filed by Pacific Plans, Inc. of the Final Decision on Disputed Assessment rendered by the OIC Deputy Commissioner, Large Taxpayer Service dated May 27, 2004.
>
> xxx xxx xxx
>
> This constitutes the **Final Decision** of this Office on the matter.
>
> *(signed)*
> **KIM S. JACINTO-HENARES**
> Commissioner of Internal Revenue"
>
> *(Underscoring supplied)*

In fine, having timely filed the Petition for Review in CTA Case No. 8040, the Third Division of this Court has acquired jurisdiction over the same. Such being the case, the said Division has the authority to issue an order nullifying the Warrant of Distraint and/or Levy dated February 11, 2010 and enjoining the BIR from collecting the subject deficiency VAT of respondent for taxable year 2001.

The prescriptive period to collect was neither interrupted nor suspended.

Petitioner brings to the fore, once again, her argument that the period to collect was interrupted/suspended. *First*, during the time when respondent executed a Waiver of the Defense of Prescription of

[7] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.
[8] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[9] Division Docket, Vol. 1, pp. 398 to 405.

the Statute of Limitations under the NIRC until October 15, 2004, since petitioner was prohibited from beginning distraint or levy, pursuant to Sections 222(d) and 223 of the 1997 Tax Code. And *second*, during the time when respondent filed a Letter dated July 16, 2004 and Letter dated February 1, 2005, where respondent in both letters purposely requested the BIR Appellate Division to hold in abeyance pending action/resolution by the Commissioner of Internal Revenue of the industry issue it raised involving the VAT on trust fund contributions of pre-need companies under RMC 13-96 (which requires that the contribution of the trust fund must be indicated in the VAT Official Receipts), until such time petitioner issued BIR Ruling No. DA-027-2006, on January 31, 2006.

We disagree.

As already pointed out in the assailed Decision, the said Letters of respondent did not have the effect of suspending the five-year prescriptive period under Section 222(c) of the NIRC of 1997, simply because the same Letters are requests for reconsideration, not requests for reinvestigation as required under Section 223 of the NIRC of 1997.

In this case, petitioner failed to disprove this Court's finding that the subject Letters of respondent are requests for reconsideration. In fact, petitioner's Decision dated December 7, 2010[10] collectively treated said Letters as a *"request for reconsideration"*. Thus, the same Letters did not have the effect of suspending the period of collection of the subject tax assessment.

Neither did the execution by respondent of a Waiver of the Defense of Prescription of the Statute of Limitations under the NIRC effective until October 15, 2004 had the effect of interrupting or suspending the period of tax collection in this case. As emphasized in the assailed Decision, the said Waiver merely extended the period to assess the tax, pursuant to Section 222(b) of the NIRC of 1997, and not the period to collect the same. It must be emphasized that this finding was also never disproved by petitioner.

Based on the foregoing disquisitions, the *Court En Banc* finds no cogent reason to modify or reverse the assailed Decision.

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

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[10] Division Docket, Vol.1, pp. 398 to 405.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice