

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER **OF CTA EB NO. 1979**
INTERNAL REVENUE, (CTA Case No. 9122)
Petitioner,

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
-versus- FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

MIFFI LOGISTICS CO. INC., Promulgated:
Respondent. **JAN 23 2020**
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RESOLUTION

MINDARO-GRULLA, J.:

This resolves the petitioner's "Motion for Reconsideration (Re: Decision promulgated 26 November 2019). The dispositive portion of the Court *En Banc's* November 26, 2019 Decision states:

"WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated August 1, 2018, rendered by the Special Second Division of this Court in CTA Case No. 9122, and its Resolution dated November 23, 2018 are **AFFIRMED.** No pronouncement as to costs.

SO ORDERED."

In assailing this Court's Decision, petitioner claims that the Court erred in cancelling and withdrawing the assessment and the warrant of distraint. Petitioner argues

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that the jurisdiction of the Court is limited to the collection procedure or post assessment and that the assessment is already final, executory and demandable.

We resolve to deny petitioner's "Motion for Reconsideration (Re: Decision promulgated 26 November 2019).

After a careful examination of petitioner's motion for reconsideration, the Court finds that the argument raised in said motion had already been sufficiently passed upon and fully discussed by the Court in Division's Decision dated August 1, 2018 and Resolution dated November 23, 2018, and by this Court *En Banc's* Decision dated August 8, 2019.

To reiterate, in a petition for review as to the action of the CIR in the issuance of warrant of distraint and/or levy, the Court's jurisdiction is not limited to collection procedure after the assessment. The Supreme Court in the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*¹, instructively ruled that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes and affirmed the cancellation of the Final Assessment Notice. Concomitantly, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect. The Supreme Court ruled as follows:

"The prescriptive period in making an assessment depends upon whether a tax return was filed or whether the tax return filed was either false or fraudulent. When a tax return that is neither false nor fraudulent has been filed, the Bureau of Internal Revenue may assess within three (3) years, reckoned from the date of actual filing or from the last day prescribed by law for filing. However, in case of a false or fraudulent return with intent to evade tax, Section 222(a) provides:

Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after

¹ G.R. No. 215957, November 9, 2016.

the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Emphasis supplied)

In Aznar v. Court of Tax Appeals, this Court interpreted Section 332 (now Section 222[a] of the National Internal Revenue Code) by dividing it in three (3) different cases: first, in case of false return; second, in case of a fraudulent return with intent to evade; and third, in case of failure to file a return. Thus:

Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax and failure to file a return is strengthened immeasurably by the last portion of the provision which aggregates the situations into three different classes, namely "falsity", "fraud" and "omission."

This Court held that there is a difference between "false return" and a "fraudulent return." A false return simply involves a "deviation from the truth, whether intentional or not" while a fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due."

Fraud is a question of fact that should be alleged and duly proven. "The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed." Fraud entails corresponding sanctions under the tax law. Therefore, it is indispensable for the Commissioner of Internal Revenue to include the basis for its allegations of fraud in the assessment notice.

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The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

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A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice." A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

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Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.

The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the "alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest" for lack of due process. Thus, the Warrant of Dstraint and/or Levy is void since an invalid assessment bears no valid effect.

Taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes should be exercised "reasonably and in accordance with the prescribed procedure."

The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights."

Clearly, the Court's jurisdiction is not limited to collection procedure after the assessment. The Court has jurisdiction to determine the validity or invalidity of an assessment to determine whether the right of the government to assess and collect taxes has prescribed.

In the case of *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*², the Supreme Court ruled that this is not the first case where the Court of Tax Appeals (CTA) validly ruled on issues that did not relate directly to a disputed assessment. Further, the Supreme Court ruled that where a waiver document is incomplete and defective, the three-year prescriptive period was not tolled or extended and continued to run. Consequently, the assessment or demand issued beyond the three (3) year period is invalid. In the same manner, Warrant of Dstraint and/or Levy issued was also null and void for having been issued pursuant to an invalid assessment. To wit:

"xxx. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:

SEC. 7. Jurisdiction. – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –

*(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;***
(Emphasis supplied).

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 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 dstraint and levy issued

² G.R. No. 162852, December 16, 2004.

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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 did not relate directly to a disputed assessment or a claim for refund. In Pantoja v. David, 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. Also, in Commissioner of Internal Revenue v. Court of Appeals, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court.

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*The waiver document is incomplete and defective and thus the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, **the Assessment/Demand No. 33-1-000757-94 issued on December 9, 1998 was invalid because it was issued beyond the three (3) year period. In the same manner, Warrant of Distraint and/or Levy No. 33-06-046 which petitioner received on March 28, 2000 is also null and void for having been issued pursuant to an invalid assessment.** (Emphases supplied).*

Clearly, a WDL can be nullified if the assessment alleged to have been final and executory was proven to have been issued beyond the prescriptive period to assess. Thus, the conclusion that a WDL is also null and void for having been issued pursuant to an invalid assessment.

Moreover in the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,³ the Supreme Court ruled that the issue of prescription of the CIR's right to collect taxes is covered by the term "other matters" over which the CTA has appellate jurisdiction and that the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. To wit:

"xxx. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

³ G.R. No. 169225, November 17, 2010.

Section 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —

*1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue.** (Emphasis supplied.)*

Plainly, the assailed CTA En Banc Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).

In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c):

***Any internal revenue tax** which has been assessed within the period of limitation above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within three years following the assessment of the tax.** (Emphases supplied.)*

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

*Sec. 3. Powers and duties of Bureau. - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including*

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the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide." (Emphases supplied.)

In this case, the issue of prescription is the heart of the controversy. Other than an allegation that the assessment was made within the ten (10)-year period, petitioner did not

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contest nor offer proof, much less argue to debunk the findings of the Court in Division's conclusion on the application of the 3-year prescriptive period to assess.

In sum, We find that no substantial argument was raised to merit reconsideration of our Decision promulgated on November 26, 2019.

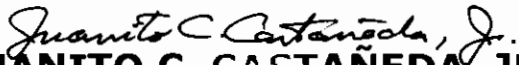
WHEREFORE, the "Motion for Reconsideration (Re: Decision promulgated 26 November 2019) is **DENIED** for lack of merit.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice