REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AB CAPITAL AND INVESTMENT CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. Case No. 8411

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

JUN 30 2015 3:29 pm

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RESOLUTION

COTANGCO-MANALASTAS, J.:

For resolution is respondent's Motion for Partial Reconsideration, filed through registered mail on May 25, 2015, and received by this Court on May 28, 2015. Petitioner filed its Reply/Opposition on June 16, 2015.

Subject of the motion for reconsideration is this Court's Decision, dated April 30, 2015, which ordered:

> "WHEREFORE, premises considered, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency income tax in the amount of P16,835,114.25, percentage tax in the amount of P953,435.15 and compromise penalties in the amount of P168,000.00 are hereby CANCELLED AND/OR WITHDRAWN. However, the assessments for deficiency withholding tax on compensation, expanded withholding tax, fringe benefits tax, final withholding tax, and documentary stamp tax are hereby UPHELD IN PART. Accordingly, petitioner is hereby ordered to pay EIGHT HUNDRED TWENTY NINE THOUSAND FORTY PESOS AND SIXTY FOUR CENTAVOS (P829,040.64) for the taxable year 2008, inclusive of the 25% surcharge imposed under Section 248(3) of the 1997 NIRC, as amended, computed as follows:

xxx

SO ORDERED."

In her motion for partial reconsideration, respondent argues that the assessment for withholding taxes are "not internal revenue taxes but such assessments were issued for failure of petitioner to withhold the correct taxes, which it is duty bound to collect as agent, therefore it is imprescriptible." Respondent argues that petitioner is being held liable in its capacity as a withholding agent and not as a taxpayer. With respect to due process, respondent argues that petitioner was full due process, and that mere filing of protest is not a guarantee that the audit findings against petitioner for deficiency tax assessments will be cancelled.

On the other hand, petitioner argues that respondent's reasoning that an assessment for withholding taxes is imprescriptible goes against law and settled jurisprudence. Petitioner also reiterates its position that it was denied due process.

The foregoing issues have been discussed and thoroughly passed upon in the assailed Decision, and the Court finds no reason to reverse or modify the said Decision. Thus, we reiterate our discussion on due process, as follows:

> "Verily, considering the provisions of Section 228 of the NIRC of 1997, as amended, RR No. 12-99, and RR No. 12-85, if the assessment protest involves a request for reinvestigation, the taxpayer must be fully accorded with the 60-day period from the date of filing his protest within which to submit his supporting documents, as the same is part and parcel of the 'due process requirement in the issuance of a deficiency tax assessment' as categorically stated in Section 3.1.5 of RR No. 12-99.
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> In this case, petitioner's protest letter filed with the BIR on November 16, 2011, expressly states that 'We respectfully reserve the right to file a supplemental protest letter and/or documents' in support of the protest letter. Counting from November 16, 2011, petitioner had until January 15, 2012 within which to submit its supporting documents. Visibly, petitioner's letter is a request for reinvestigation as the plea for re-evaluation is on the basis of **additional evidence that the taxpayer intends to present in the investigation**. In other words, the 60-day period granted to the

taxpayer cannot be disregarded by respondent without violating the former's right to due process.

Thus, when the respondent issued the FDDA and concluded on December 8, 2011 that petitioner failed to introduce evidence to reverse the validity of her findings when petitioner still had until January 15, 2012 (end of the 60-day period) to submit the same, the respondent failed to observe petitioner's right to due process expressly guaranteed under Section 228 of the NIRC of 1997, as amended, RR No. 12-99, and RR No. 12-85.

Respondent issued the FDDA as early as December 8, 2011, where it was specifically stated that:

> 'The records of this case disclosed that you have not introduced any evidence to reverse the validity of the aforementioned findings that resulted to your 2008 deficiency internal revenue tax liabilities.'

'[D]ue process requires more than giving a person the right to be heard. In a landmark Decision, the Supreme Court enumerated the following principles governing administrative due process:

1. The right to a hearing, which included the right to present one's case and **<u>submit evidence in support thereof</u>**;

2. The tribunal must consider the evidence presented;

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By reason of the foregoing, the FDDA issued by respondent is considered void for failure of the respondent to fully accord petitioner the 60-day period to submit documents which is part and parcel of the 'due process requirement in the issuance of a deficiency tax assessment' stated in Section 3.1.5 of RR No. 12-99 and expressly guaranteed under Section 228 of the NIRC of 1997, as amended, RR No. 12-99, and RR No. 12-85."[1]

However, as discussed in the Decision, the void FDDA does not necessarily result to a void assessment, considering that the FAN/FLD was validly issued.

As to the issue on prescription, it has been consistently ruled that assessments shall be made within three (3) years after the last day prescribed by law for the filing of the return. With respect to withholding taxes, the same are filed monthly,

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[1] Docket, pp. 1910-1911.

and in the case of petitioner, returns must be filed within 15 days following the end of the month. In the instant case, the Court finds no reason to reverse the findings of prescription for the months of January 2008 to September 2008, considering that the assessment was issued only on October 28, 2011.

WHEREFORE, premises considered, the instant Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice