REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PENTA TECHNOLOGY, INC.,
Respondent.

CTA EB NO. **2046**
(CTA Case No. 9258)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 21 2021 2:30pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the Motion for Reconsideration[1] (**MR**) filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) on 11 March 2021. It seeks the reversal of the Decision dated 09 February 2021[2] (**assailed Decision**) reached by this Court in the above-captioned case.

The dispositive portion of the assailed Decision reads:

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[1] *Rollo*, pp. 84-87.
[2] Id., pp. 66-78.

> ...
>
> **WHEREFORE,** the foregoing premises considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 03 April 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 14 November 2018 and 08 March 2019, respectively, of the Special First Division in CTA Case No. 9258, entitled *Penta Technology, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

A perusal of the MR shows that petitioner does not raise new issues. Although he does not contest the fact that his agents were not armed with a Letter of Authority (**LOA**) when they initiated an assessment of respondent Penta Technology, Inc. (**respondent/PTI**), petitioner remains insistent on respondent's alleged failure to file a timely protest to the Final Assessment Notice[3] (**FAN**).

The records show that agents of the Bureau of Internal Revenue (**BIR**) conducted an audit of respondent *via* a mere Tax Verification Number[4] issued by Regional Director (**RD**) Manuel V. Mapoy (**Mapoy**). As a result of the investigation, a FAN was issued and served on respondent through a certain Marissa Marquez (**Marquez**) on 11 January 2011.

Respondent, however, claims that Marquez was not authorized to receive such notices, and it was only on 13 January 2011 that the same was received by its authorized representative Ria A. Sablon (**Sablon**). It maintains that, as a result, the filing of respondent's protest on 11 February 2011 was made within the 30-day reglementary period prescribed under Section 228 of the National Internal Revenue Code[5] (**NIRC**) of 1997, as amended.

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[3] Exhibit "R-4", Division Docket, p. 193.

[4] Exhibit "P-3", id., p. 115.

[5] **SEC. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

...

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction

We resolve.

While it may be argued that respondent's defense appears as a mere afterthought to justify its belated protest, the fact remains that there was a patent lack of authority on the part of the BIR agents in the conduct of respondent's assessment.

Obviously, in this case, the Court has been called to arbitrate between two opposing rights namely, the right of the State to collect taxes and the right of the taxpayer to due process. In exercising these rights, both parties' respective conduct is far from perfect. Petitioner failed to issue an LOA prior to its assessment of respondent while the latter did not timely protest the same. *However*, petitioner's negligence in this case is clearly the more substantial one as it goes directly against the requirements of due process.

As previously explained in the assailed Decision, petitioner's breach of the due process requirement is the more paramount consideration *vis-à-vis* respondent's procedural missteps. The Supreme Court expressed a similar sentiment in the case of *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[6], wherein it held that:

> ...
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> ... In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.
>
> ...

Thus, technicalities take a backseat to the violation of the constitutional right of due process. It must be emphasized that what is involved in the present case is not a mere irregularity in the LOA's issuance but the complete absence of it, making any assessment pursued against respondent patently void. There is, in truth, a stark difference between the issuance of an LOA, albeit defective, and the failure to issue one in the first place. Whereas, the first circumstance

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may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[6] G.R. No. 198677, 26 November 2014; Citation omitted.

implies the presence of a legal act done irregularly, the latter circumstance shows total omission of a duty required by law.

To conclude, it cannot be gainsaid that, "a void assessment bears no valid fruit".[7] In acknowledging this principle, the Supreme Court has repeatedly put aside matters of technicality when faced with allegations of violations of due process. Such is evident in the cases of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[8] and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[9] as exhaustively discussed in the assailed Decision.

WHEREFORE, the foregoing considered, petitioner Commissioner of Internal Revenue's Motion for Reconsideration filed on 11 March 2021 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my Separate Concurring Opinion dated February 9, 2021)
CATHERINE T. MANAHAN
Associate Justice

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7 *Commissioner of Internal Revenue v. Reyes,* 516 Phil. 176 (2006).
8 G.R. No. 185371, 08 December 2010.
9 G.R. No. 222743, 05 April 2017.

(I continue to join Justice Catherine T. Manahan's SCO)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Maria Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice