CTA Form No. 8 (For DCC)

19-000582-0066

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10222

ROYAL PALM RESIDENCES CONDOMINIUM, INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. WILMER B. DEKIT
ATTY. APRILYN T. POBAR
Bureau of Internal Revenue
Legal Division, Revenue Region No. 8B
2nd Floor, BIR Regional Office Building
No. 313 Sen. Gil Puyat Ave., Makati City

BELLO VALDEZ & ESGUERRA (BVE LAW)
17th Floor, Robinsons Equitable Tower
4 ADB Avenue corner P. Poveda Drive
Ortigas Center, Brgy. San Antonio, Pasig City

GREETINGS:

You are hereby notified by these presents that on **July 29, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 30, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ROYAL PALM RESIDENCES CONDOMINIUM, INC., *Petitioner,*	**CTA CASE NO. 10222**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, and **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 2 9 2024 3:40PM

x---x

RESOLUTION

DEL ROSARIO, P.J.:

For resolution is respondent's "**Motion for Reconsideration (of the Decision dated 27 March 2024)**" posted on April 16, 2024 *via* registered mail, with petitioner's "**Comment/Opposition (To Respondent's Motion for Reconsideration Dated 16 April 2024)**" filed on May 2, 2024.

Respondent prays that the Court: *(i)* reconsider and set aside the Decision dated March 27, 2024 *(ii)* render another Decision denying the Petition for Review; and, *(iii)* order petitioner to pay deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax for taxable year 2014 in the aggregate amount of ₱15,433,348.45, plus delinquency interest until full payment, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing, the Petition for Review is hereby **GRANTED**. Accordingly, the following are hereby **CANCELLED** and **WITHDRAWN**: *(i)* Preliminary Assessment Notice No. P-LA-006713-44-2014; *(ii)* Formal Assessment Notice No.

ELA36823-14-17 with Details of Discrepancies and the Assessment Notices, all dated December 13, 2017; *(iii)* Final Notice Before Seizure No. FNBS-2018-07-000194 dated July 4, 2018; and, *(iv)* Warrant of Distraint and/or Levy No. RR8B-09-16-00061 dated November 6, 2019, all issued by the Commissioner of Internal Revenue assessing petitioner of deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax for taxable year 2014 in the total amount of Fifteen Million Four Hundred Thirty-Three Thousand Three Hundred Forty-Eight Pesos and 45/100 (₱15,433,348.45), inclusive of interest and surcharge.

Respondent Commissioner of Internal Revenue, his authorized representatives or any other person acting on his behalf are hereby **ENJOINED** from enforcing the collection of aforesaid taxes covered by the Formal Assessment Notice No. ELA36823-14-17, the Final Notice Before Seizure No. FNBS-2018-07-000194 dated July 4, 2018, and the Warrant of Distraint and/or Levy No. RR8B-09-16-00061 dated November 6, 2019.

SO ORDERED."

In support of his Motion, respondent asserts that: *(i)* petitioner actually received the Formal Assessment Notice (FAN) on December 21, 2017; *(ii)* the FAN for taxable year 2014 has become final, executory and demandable; *(iii)* since the FAN dated December 13, 2017 already attained finality, its validity and correctness could no longer be assailed; and, *(iv)* the issuance of the Warrant of Distraint and/or Levy (WDL) is proper since the assessment for taxable year 2014 has become final, executory and demandable. Assuming there was no actual receipt of the FAN by Ms. Ramboyong, respondent claims that petitioner still received the FAN when the Property Manager Joseph Carizo instructed and authorized Ms. Carmela Agena to obtain the FAN from Revenue Officer (RO) Adrian Anthony D. Liwanag. Respondent posits that the assessment is still valid as petitioner, after receiving the FAN, is able to file its protest thereto.

In its Comment/Opposition, petitioner retorts that: *(i)* it did not validly receive the FAN; hence, the tax assessment is void for non-compliance with the requirements of due process of law; *(ii)* an invalid assessment bears no valid fruit and may not attain finality; and, *(iii)* no tax collection can be pursued pursuant to an invalid tax assessment.

THE COURT'S RULING

After careful evaluation of the parties' respective arguments, the Court resolves to deny respondent's "Motion for Reconsideration".

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings and conclusions.[1] It is thus incumbent upon the movant to convince the Court that certain findings and conclusions in the assailed Decision are not supported by evidence or are contrary to law.

The Court notes that respondent's arguments in his Motion are mere rehash of the arguments in his Answer and Memorandum which were adequately passed upon in the assailed Decision. Nonetheless, the Court shall address respondent's arguments to finally put his mind to rest.

Respondent insists that there was a valid substituted service of the FAN when Ms. Ramboyong received it on December 21, 2017. Assuming that there was no valid service of the FAN on December 21, 2017, respondent contends that petitioner still received the FAN on July 18, 2018 through Ms. Agena from RO Liwanag. Respondent asserts that the assessment was still valid as petitioner, after receiving the FAN, was able to file its protest thereto.

Respondent's arguments must fail.

To reiterate, Ms. Ramboyong has no authority to receive the subject FAN as: *(i)* she is not one of petitioner's responsible officers; *(ii)* there was no written authority from petitioner's Board of Directors; and, *(iii)* her functions, as listed in the "**Service Agreement for Administrative and Messengerial Services**" dated September 19, 2016[2] entered into between petitioner and Joblink Business Solutions Inc. (formerly Professional Cleaners and Manpower Services, Inc.), do not include the authority to receive the FAN on petitioner's behalf.

---

[1] Section 2, Rule 37 of the Rules of Court.
[2] Exhibit "P-24-Rebuttal", *Docket*, Vol. II, pp. 769 to 779.

The testimony of RO Helen Liquido in terms of the substituted service of the FAN reveals two things: *First*, there was no valid substituted service of the FAN as RO Liquido did not follow the proper procedure under Revenue Regulation (RR) No. 12-99, as amended by RR No. 18-2013. *Second*, RO Liquido's testimony has no probative value as her testimony in her Judicial Affidavit is grossly inconsistent with her testimony during cross-examination as elucidated on pages 16 to 17 of the assailed Decision. In evaluating the totality of the evidence presented by both parties, the same leads the Court to conclude that Ms. Ramboyong is not authorized to receive the subject FAN, and that there is no valid substituted service of the said FAN.

Anent the issue that an assessment is valid as the taxpayer was able to protest despite a violation of its right to due process, *Commissioner of Internal Revenue vs. Vitalo Packaging International, Inc.* [3] is instructive. In the aforecited case, Vitalo Packaging International, Inc. (*Vitalo*) was able to get a hold of the Formal Letter of Demand (FLD)/FAN through the goodwill of the new lessee of its old address who forwarded the mail matter. While Vitalo was able to file a protest to the FLD/FAN, the Supreme Court adopted the findings of the Court of Tax Appeals (CTA) which ruled that the filing of a protest to the FLD/FAN did not cure the Commissioner of Internal Revenue's violation of its right to due process, *viz.*:

> "The CTA has already properly disposed of the first issue. **That Vitalo was able to file a protest to the FLD/FAN did not cure the CIR's violation of its right to due process.**
>
> This is further emphasized by the CTA *En Banc*'s finding that Vitalo was only able to get its hands on the FLD/FAN through the goodwill of the new lessee of its old address, which took the initiative to forward the mail it mistakenly received. **The Court adopts the CTA *En Banc's* view of Vitalo's act of filing its protest, *i.e.,* that it was done merely to preserve its rights and remedies and to abort an unjust collection of taxes by the state. Its proactiveness must not be taken against it, and its act cannot serve to negate the fault of the CIR in improperly serving the notices.**" (*Citations omitted* and *boldfacing supplied*)

Apropos to the present case, even if petitioner was able to get hold of a copy of the FAN through its own initiative, and eventually file a protest, still, respondent's fault in improperly resorting to substituted service is not cured thereby.

---

[3] Resolution, G.R. No. 258937, February 26, 2024.

OM

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[4] the Supreme Court declared in no uncertain terms that **the failure of the CIR to strictly comply with the requirements laid down by law and its own rules** is a denial of Metro Star's right to due process. While strict compliance with such requirements is necessary for a valid tax assessment, failure to do so is fatal as it amounts to violating petitioner's right to due process.

In fine, respondent's improper substituted service of the FAN to petitioner renders the assessment issued against it null and void. Correspondingly, the WDL issued pursuant thereto is void as well.

WHEREFORE, premises considered, respondent's "**Motion for Reconsideration (of the Decision dated 27 March 2024)**" is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

---

[4] G.R. No. 185371, December 8, 2010.