REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2450
(CTA Case No. 9756)

Present:

Del Rosario, P.J.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, JJ.

- versus -

MARILY DEVELOPMENT CORPORATION,
Respondent.

Promulgated:
OCT 12 2022 10:47am

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RESOLUTION

RINGPIS-LIBAN, J.:

For resolution of the Court *En Banc* is petitioner Commissioner of Internal Revenue's *Motion for Reconsideration [Re: Decision dated 31 May 2022]*[1] filed *via* registered mail on June 22, 2022 and received by the Court on July 4, 2022, with respondent Marily Development Corporation's *Opposition to Petitioner's Motion for Reconsideration*[2] filed via private courier on August 30, 2022.

Petitioner's *Motion* seeks reconsideration of the Decision of the Court *En Banc* promulgated on May 31, 2022,[3] ("Assailed Decision") affirming the

[1] *En Banc* Docket, pp. 80-89.
[2] *Id.*, pp. 95-100.
[3] *Id.*, pp. 59-79.

judgment of the Second Division ("Court in Division") of this Court in CTA Case No. 9756. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit. The Decision dated September 10, 2020 and Resolution dated February 11, 2021 of the CTA's Second Division in CTA Case No. 9756 are both **AFFIRMED**.
>
> **SO ORDERED.**"

In her *Motion*, petitioner insists that the assessment of deficiency taxes as shown in the FAN issued to the respondent-taxpayer is valid. She added that absent any evidence showing that it is void, the presumption of correctness of tax assessment prevails. Petitioner also asserts that it is incumbent upon the taxpayer to establish and prove the prescription of tax assessment by sufficient evidence.

Petitioner likewise claims that the power to make assessment is vested to her under Section 6 of the National Internal Revenue Code of 1997, as amended (1997 NIRC). Thus, it is her official duty to issue assessment notices containing the deficiency taxes of a certain taxpayer for a certain period. And absent any evidence presented by the taxpayer showing irregularities in the assessment process, the issuance of assessment of deficiency taxes for taxable year 2006 is presumed to be regularly performed.

Petitioner also contends that since respondent neither raised any issue questioning the validity of assessment procedure conducted by the petitioner nor present evidence establishing such, the presumption of validity of assessment shall operate.

On the other hand, respondent, in its *Opposition to Petitioner's Motion for Reconsideration* points out that petitioner did not submit jurisprudence to contradict the cited Supreme Court decision in the Assailed Decision wherein it was held that the absence of grant of authority in the form of an LOA to conduct an examination and assessment results to an invalid examination/investigation or assessment.

Respondent likewise submits that there is a specific legal provision under Section 13 of the 1997 NIRC where it provides that "upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." That there is no qualification in the said codal provision that a revenue examiner is authorized in any other way other than pursuant to a validly issued LOA. Respondent also adds that petitioner has not cited, and there is no legal provision or BIR circular, that would dispense with the requirement of LOA preparatory to the conduct of an examination.

Given that petitioner seeks to collect deficiency taxes from the taxpayer, respondent contends that petitioner has the burden of establishing the legal basis for the conduct of an investigation and issuance of the assessments. Respondent also posits that there was a complete abdication of basic function of presenting documentary and testimonial evidence on petitioner's part to prove the validity of the tax investigation and issuance of the assessments as she did not even present any evidence before the Court in Division.

After careful evaluation of the arguments raised by petitioner vis-à-vis the records of the case, the Court *En Banc* resolves to deny petitioner's *Motion for Reconsideration [Re: Decision dated 31 May 2022]* for lack of merit. Petitioner failed to raise any compelling reason to warrant the modification much less reversal of this Court's findings.

The Court *En Banc* maintains its position that the presumption of regularity in the performance of official duties as well as the presumption of correctness of tax assessment cannot be invoked as they never materialized due to the absence of proof as to the existence of the facts upon which they may be based. The existence of a valid LOA and the revenue officer's possession of the requisite authority (pursuant to a valid LOA) to conduct an audit of respondent's books of accounts and other accounting records are *precisely* the basic facts that could give rise to the inference that the assessments were *regularly* issued and that the same are *prima facie* correct. These basic facts could have easily been established by the presentation of the LOA itself and also by the testimonies of the revenue officers who actually conducted and completed the audit of respondent's books of accounts and other accounting records pursuant to such LOA. Petitioner, however, did not present any evidence at all. As stated in the Assailed Decision, this Court cannot simply presume that: (1) a LOA was validly issued; and (2) that the revenue officers who actually conducted the audit of respondent's books and records up to its completion are clothed with the requisite authority to perform the same pursuant to a validly-issued LOA, to sustain petitioner's bare invocation of the above-mentioned presumptions.

With regard to the issue of prescription, the Court *En Banc* stands by its ruling that respondent's failure to present its tax returns for calendar 2006 as evidence before this Court cannot be equated to the concept of "failure to file returns" as contemplated by Section 222(a) of the 1997 NIRC. That no returns were presented before this Court does not necessarily mean that no returns were filed before the BIR. As explained in the Assailed Decision, the taxpayer's failure to present its tax returns before this Court cannot reasonably give rise to the presumption that no returns have been filed before the BIR within the period prescribed by law for filing the returns. The law itself already mandates the application of the 3-year prescriptive period as a general rule. It is the CIR's burden to prove otherwise. As borne out by the records, this Court finds no basis to warrant the application of the 10-year prescriptive period in this case. The 3-year prescriptive period under Section 203 shall therefore apply.

WHEREFORE, petitioner's *Motion for Reconsideration [Re: Decision dated 31 May 2022]* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

With due respect, I reiterate my Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

With due respect, I join PJ Del Rosario's Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

With due respect, I join PJ Del Rosario's Dissenting Opinion
LANEE S. CUI-DAVID
Associate Justice