REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

NEW COAST HOTEL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9146

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
DEC 04 2017
10:02 a.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration (Re: Decision dated September 19, 2017) ("Motion for Reconsideration") filed on October 11, 2017; with Opposition Re: Petitioner's Motion for Reconsideration (Re: Decision dated September 19, 2017) ("Opposition") from respondent filed on November 6, 2017.

On September 19, 2017, the Court promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE**, in view of the foregoing, the Petition for Review filed by petitioner New Coast Hotel, Inc., claiming for the refund of or the issuance of a tax credit certificate in the amount of Php592,273.32, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

In its Motion for Reconsideration, petitioner assails the ruling of the Court that the assessment for deficiency expanded withholding

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[1] *Records, CTA Case No. 9146, Decision,* pp. 406-430.

[2] *Id.*, p. 428.

tax ("EWT") for the month of August 2012 had already attained finality when petitioner filed its juridical claim before the Court on September 16, 2015. Petitioner reiterates that the Preliminary Notice issued by the Large Taxpayers - Document Processing and Quality Assurance Division, with attached Audit Results/Assessment Notice, does not qualify as an assessment notice under *Section 3*[3] *of Revenue Regulations ("RR") No. 12-1999*[4], for failure to contain a definite and unequivocal demand for the payment of deficiency taxes. According to petitioner, the Preliminary Notice merely informed petitioner that its BIR Form No. 1601-E for the month of August 2012 cannot be processed; and that instead of demanding payment for alleged deficiency EWT, it merely requested for an explanation/information or correction within thirty (30) days from notice. Moreover, even assuming that the tenor of the letter dated April 1, 2014 constitutes a definite and unequivocal demand for the payment of deficiency taxes, petitioner submits that the same cannot be a valid substitute for a Formal Letter of Demand or Final Assessment Notice because it was only issued in response to petitioner's explanation letter dated March 25, 2014; more so, that no assessment notice was attached thereto.

Petitioner restates that even assuming for the sake of argument that there was a valid assessment, there is no legal basis for respondent to disallow the application of petitioner's excess EWT payment in the month of July 2012 as credit against its EWT liability for August 2012. It is petitioner's stance that there is no express prohibition on offsetting of EWT in the *1997 National Internal Revenue Code*[5]*, as amended ("1997 NIRC")*, or in any administrative regulation. Petitioner adds that the Electronic Filing and Payment System of the Bureau of Internal Revenue ("BIR") allowed petitioner to apply its excess EWT payment for July 2012 as a credit against its EWT liability for August 2012. Thus, petitioner concludes, it should not be held liable for the offsetting.

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[3] SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -

xxx xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof).

[4] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[5] *Republic Act No. 8424*, January 1, 1998.

Petitioner asserts that its act of offsetting the Php340,760.16 amount from its total EWT due for the month of August 2012 does not violate the Trust Fund Doctrine because said amount was already remitted and paid in advance to the government when it filed its July EWT Return. On the contrary, petitioner avers that the government benefitted from such advance payment as it received money from the taxpayer which is not yet due and payable.

Lastly, petitioner insists that it should not be held liable for the alleged deficiency EWT because it merely relied on the advice of respondent's Revenue Officer ("RO"). Petitioner submits that the principle of equity should be applied, especially in the instant case where no prejudice was caused to the government and to third parties, and where petitioner's action was impelled by an honest belief that the RO's recommendation was an established practice in the BIR.

Meanwhile, in his Opposition, respondent counters that the Court correctly denied the Petition for Review in view of the finality of the assessment. Respondent avers that petitioner's argument that there was no valid assessment should not be given credence because petitioner had all the opportunities to challenge the demand for payment contained in the letter dated April 1, 2014. Moreover, the payment made on December 1, 2014 constitutes a positive act which concludes petitioner's admission of its own tax liability. Clearly, respondent submits, petitioner is already estopped from questioning the validity of the assessment.

Respondent further asserts that there was no erroneous or unlawful payment of deficiency EWT for the month of August 2012. Respondent adds that since there was no provision in the *1997 NIRC* or administrative regulation which allows a taxpayer to offset its excess EWT payment against its EWT liability for the succeeding taxable period, petitioner cannot perform a particular remedy which is not provided by law; thus, it should have filed a claim for refund on its overpayment.

Contrary to petitioner's claim that there was no violation of the Trust Fund Doctrine, respondent alleges that a violation is evident when only a portion of the taxes that petitioner withheld on August

2012 was remitted to the government, and the remaining portion was kept by petitioner.

Finally, respondent insists that petitioner's alleged reliance on the advice of the RO cannot set aside its liability to pay the correct and exact EWT, more so, that it could have known that its proper remedy in case of excess payment of tax is to file a claim for refund and/or tax credit pursuant to *Section 204(C) and Section 229 of the 1997 NIRC.* According to respondent, petitioner cannot also rely on the principle of equity because the same is applied only in the absence of, but never in contravention of statutory law.

The Court will now resolve petitioner's Motion for Reconsideration.

After a careful consideration and evaluation of the parties' respective arguments, the Court finds that the arguments proffered by petitioner are mere rehash of that which have already been amply discussed, analyzed and passed upon by the Court in the Assailed Decision. Consequently, the Court finds petitioner's Motion for Reconsideration devoid of merit.

Nevertheless, the Court will expound on the finding of lack of jurisdiction of the Court to rule on the validity of the assessment which resulted in the collection of tax that is subject of the claim for refund or the issuance of a tax credit certificate ("TCC"), if only to reinforce the discussion in the Assailed Decision.

Section 228 of the 1997 NIRC and *Section 3.1.5 of RR No. 12-1999* lay out the procedure to be followed in questioning an assessment, the pertinent provisions of which read:

> SEC. 228. *Protesting of Assessment.* -
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> xxx xxx xxx
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> 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 may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period;

> otherwise, the decision shall become final, executory and demandable.
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> 3.1.5 *Disputed Assessment.* –
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> xxx xxx xxx
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> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: *Provided, however,* that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

From the foregoing, a taxpayer who disagrees with the denial of the protest by the Commissioner of Internal Revenue's ("CIR") authorized representative may appeal to the CIR or to the CTA within thirty (30) days from receipt of such denial. If the taxpayer opted to elevate the matter to the CIR, the latter has one hundred eighty (180) days from filing of the protest to decide. The taxpayer may then appeal the adverse decision to the CTA within thirty (30) days receipt thereof. If the CIR fails to decide within the 180-day period, said inaction shall be considered a denial, in which case, the taxpayer may elevate the matter with the CTA within thirty (30) days from the lapse of the 180-day period. In the alternative, the taxpayer may opt to wait for the decision of the CIR even beyond the 180-day period, and thereafter elevate its claim to the CTA within thirty (30) days from receipt of the adverse decision. It must be remembered, however, that these options are mutually exclusive and resort to one bars application of the other.[6]

In the instant case, the protest filed by petitioner was denied[7] by OIC-Assistant Commissioner Alfredo V. Misajon ("Assistant Commissioner Misajon") in a letter[8] dated April 1, 2014 and received by petitioner on May 6, 2014. Under the foregoing rules, petitioner has thirty (30) days from May 6, 2014 or until June 5, 2014 within which to appeal to the CIR or to the CTA. Petitioner requested for reconsideration with Assistant Commissioner Misajon on May 29, 2014.[9] It also filed an appeal before the CIR on June 5, 2014.[10] Thereafter, without waiting for the decision of the CIR, petitioner filed a Petition for Review with the Court on September 16, 2015.

When petitioner appealed to the CIR, the CIR had only until September 22, 2014, or one hundred eighty (180) days from the filing of the protest on March 26, 2014, to decide. Thereafter, petitioner has until October 22, 2014 to appeal to the CTA. Clearly, when petitioner filed its appeal before the Court on September 16, 2015, the same is already beyond the period allowed by law, thus rendering the assessment final, executory and demandable.

Given that the assessment had become final, petitioner cannot now question its validity in a form of a claim for refund or issuance of a TCC before this Court. Instead of incorporating in the Petition its defenses against the validity of the assessment, petitioner could have raised the same in an appeal timely filed before this Court. For failure to do so, petitioner has no one to blame but itself.

To reiterate the ruling of the Supreme Court in *Zamboanga Forest Managers Corporation v. Pacific Timber and Supply Co.*[11]:

> Although appeal is essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or part of the due process but is merely a

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[6] *RCBC v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[7] *Records, Exhibit "P-8," Letter Re: Offsetting,* p. 294.
[8] *Id., Exhibit "P-8," Letter Re: Offsetting,* p. 294.
[9] *Id., Exhibit "P-9," Request for Reconsideration to Mr. Misajon,* pp. 295-299.
[10] *Id., Exhibit "P-10," Request for Reconsideration,* pp. 300-305.
[11] G.R. No. 173342, October 13, 2010, 633 SCRA 82.

> statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court - not even the Supreme Court - has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.

Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the Court that its ruling is erroneous and improper, contrary to laws and evidence.[12] Having failed to do so, petitioner's Motion for Reconsideration must necessarily fail.

All told, the Court finds no cogent justification to disturb the conclusions reached in the Assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated September 19, 2017) filed on October 11, 2017 is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated September 19, 2017 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[12] *Coquilla v. Commission on Elections,* G.R. No. 151914, July 31, 2002, 434 Phil. 861.