REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UPS-DELBROS TRANSPORT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2026
(CTA Case No. 9063)

x----------------------------------x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

UPS-DELBROS TRANSPORT, INC.,
Respondent.

CTA EB NO. 2031
(CTA Case No. 9063)

Present:

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

Promulgated:
JUN 0 2 2021 4:22pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution are:

1. UPS-Delbros Transport Inc.'s (**UPS-Delbros**') Motion for Reconsideration (Re: Decision dated November 19, 2020)[1] (**MR**) filed on 10 December 2020, with Commissioner of Internal Revenue's (**CIR's**) Manifestation[2] filed *via* registered mail on 25 January 2021[3]; and,

2. CIR's MR[4] filed *via* registered mail on 07 December 2020[5], with UPS-Delbros' Comment (Re: CIR's Motion for Reconsideration dated December 7, 2020)[6] filed on 18 January 2021.

UPS-Delbros seeks the reconsideration of the Decision rendered on 19 November 2020 on the following grounds:

1. The waivers were not duly notarized;
2. The expanded withholding tax (**EWT**) assessment for December 2005 is not based on actual and verifiable facts; and,
3. The Court erred in computing the deficiency and delinquency interest due on UPS-Delbros' alleged deficiency EWT for Calendar Year (**CY**) 2005.

UPS-Delbros insists that the waivers were not duly notarized and invalid. It points out that, as to the first waiver, the place of execution was in Parañaque City while the notarial act was done in Makati City. Whereas, for the second and third waivers, while the notarial act was allegedly made in Parañaque City, the professional tax receipt (**PTR**) registration of the notary public was in Makati City.

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1 *Rollo* (CTA EB No. 2026), pp. 186-193.
2 Id., pp. 211-212.
3 Received by the Court on 03 February 2021.
4 *Rollo* (CTA EB No. 2026), pp. 194-199.
5 Received by the Court on 17 December 2020.
6 *Rollo* (CTA EB No. 2026), pp. 204-210.

UPS-Delbros argues that no notary public shall possess authority to do any notarial act beyond the limits of its jurisdiction. If a notary public does so, his notarization should be deemed invalid and non-compliant with the strict requirements of Revenue Memorandum Order (**RMO**) No. 20-90[7] and Revenue Delegation Authority Order (**RDAO**) No. 05-01[8]. In herein case, UPS-Delbros claims that the subject waivers are invalid and thus failed to extend the periods within which to issue the deficiency tax assessments against it.

UPS-Delbros also contends that the EWT assessment for December 2005 is not based on actual and verifiable facts but on the best evidence obtainable. According to it, had the Bureau of Internal Revenue (**BIR**) accessed and used the Annual Information Return, which was readily available to it, it could have avoided resorting to "estimates" of its income payments from its Accounts Payable register.

Lastly, UPS-Delbros maintains that the Court erred in computing the deficiency and delinquency interests due on its alleged EWT for CY 2005 as the interest computed were grossly excessive and unconscionable. It posits that the simultaneous imposition of deficiency and delinquency interests, resulting in the payment of interest rate at 40% *per annum*, gives incentive to or even promotes delay in the assessment and collection of taxes.

The CIR manifested that he will be adopting his arguments in his Petition for Review and own MR as his comment to UPS-Delbros' MR.

On the other hand, the CIR remains firm that UPS-Delbros had undeclared income amounting to ₱55,415,430.00. It claims that UPS Delbros International Express, Ltd., Inc. (**UDE**) made income payments of ₱55,415,430.00 on two (2) occasions and were subjected to withholding tax amounting to ₱1,108,308.40 *per* transaction, or an aggregate of ₱2,216,618.80. The said total amount was claimed as credit, however, only ₱55,415,430.00 had been declared as revenue. Thus, there was undeclared revenue totalling to ₱55,415,430.00.

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7 *Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.*

8 *Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.*

Relatedly, with the underdeclaration of income, the 2005 Income Tax Return (**ITR**) is false, thus warranting the application of the 10-year prescriptive period. Accordingly, the period to assess UPS-Delbros for deficiency income tax and value-added tax (**VAT**) has not yet prescribed.

In refutation, UPS-Delbros contends that it was able to sufficiently establish the circumstances surrounding the withholding of taxes from UDE's payment to it. It echoed the Court's finding that there was no underdeclaration of income and that the item of the assessment corresponding thereto was aptly withdrawn.

We resolve.

After an assiduous review of the records of this case and the parties' contrasting arguments, We find the parties' respective MRs to be both unmeritorious. Other than the argument that the waivers were not duly notarized, the parties' other assigned errors are mere reiterations of their previous arguments which the Court already considered in the assailed Decision.

In its attempt to have the waivers nullified, UPS-Delbros attacks the notarization of the subject waivers. Allegedly, the waivers suffer patent defects proceeding from the notarial act. However, it is worthy to note that the notarization of the waivers was UPS-Delbros' responsibility. When it presented the same to the BIR, it could only be deemed to have condoned the "flawed" waivers. Put differently, it was responsible for the waivers' defect and if the BIR relied on them in good faith, it could not now be permitted to disown its own previous action.

Notwithstanding the above, the Court has scrutinized these waivers and their execution and finds no fatal defects to warrant their total nullification.

As regards the first waiver, it is argued that the document was executed in Parañaque City, while the notarial act was done in Makati City. Although the notary public's authority to perform notarial act is limited within the territorial jurisdiction of the commissioning court, in this case, Makati City, there is no requirement that the place of execution of the document must also be within the same jurisdiction.

Section 11, Rule III on *Commissioning of Notary Public*[9] reads:

> ...
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> Sec. 11. *Jurisdiction and Term*. – A person commissioned as notary public **may perform notarial acts in any place within the territorial jurisdiction of the commissioning court** for a period of two (2) years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under these Rules and the Rules of Court.[10]
>
> ...

Concomitantly, acknowledgment refers to an act in which an individual on a single occasion:

a) appears in person before the notary public and **presents an integrally complete instrument or document**;

b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and,

c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.[11]

From the foregoing, it is clear that the place of execution need not be within the territorial jurisdiction of the commissioning court of the notary public. It suffices that the instrument to be notarized is presented to him or her and the act of notarization is done within the jurisdiction of the commissioning court.

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9 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC.
10 Emphasis supplied.
11 Section 1, Rule II *Definitions*, A.M. No. 02-8-13-SC; Emphasis supplied.

As to the second and third waivers, UPS-Delbros emphasizes that while the notarial act was done in Parañaque City, the PTR registration of the notary public is in Makati City.

PTR registration and place of notarial commission are two (2) different things. The former pertains to the local tax paid by a professional to practice the profession, while the latter corresponds to the territorial jurisdiction of the commissioning court. The payment of PTR in one city does not automatically follow that it should be the same city where the notary public was commissioned.

Section 139(b)[12] of the Local Government Code (**LGC**) provides:

> ...
>
> Sec. 139. Professional Tax. -
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> ...
>
> (b) Every person legally authorized to practice his profession shall pay the professional tax to the province where he practices his profession or where he maintains his principal office in case he practices his profession in several places: Provided, however, **That such person who has paid the corresponding professional tax shall be entitled to practice his profession in any part of the Philippines without being subjected to any other national or local tax, license, or fee for the practice of such profession.**[13]
>
> ...

It is therefore possible that the notary public maintains his principal place of business in Makati City where he paid his PTR, while also maintaining an office in Parañaque City where he was commissioned as a notary public.

Indubitably, there is no fatal infirmity that would warrant the nullification of the three (3) subject waivers. We thus affirm our earlier ruling that the three (3) subject waivers are valid.

In closing, We reiterate that the parties' other assigned errors are mere rehash of the basic issues already passed upon in both the Court

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12 Book II, Title One. – Local Government Taxation, Chapter 2. - Specific Provisions on the Taxing and Other Revenue Raising Powers of Local Government Units.

13 Emphasis supplied.

Division's Amended Decision[14] and Resolution[15], and Court *En Banc's* Decision[16].

In *Shangri-la International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[17], the Supreme Court opined that it is incumbent upon the movant to raise substantially plausible matters to warrant the relief sought, thus:

> ...
>
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired cause of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.[18]
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> ...

WHEREFORE, the foregoing considered, the Motions for Reconsideration on the Decision dated 19 November 2020 filed by UPS-Delbros Transport, Inc. and the Commissioner of Internal Revenue are both **DENIED** for lack of merit. Accordingly, the assailed Decision dated 19 November 2020 is hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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14 Dated 19 October 2018; *Rollo* (CTA EB No. 2026), pp. 71-82.
15 Dated 21 February 2019; id., pp. 83-92.
16 Id., pp. 163-185.
17 G.R. No. 159938, 22 January 2007.
18 Citation omitted.

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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

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice