REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

V.Y. DOMINGO JEWELLERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9367

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated: JUN 19 2020
3:26 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is Respondent's "Motion for Reconsideration (Re: Decision promulgated on October 01, 2019)"[1], filed on November 12, 2019, with Petitioner's "Motion to Strike with *Ex Abudante Ad Cautelam* Comment [Re: Motion for Reconsideration dated 11 November 2019]", filed on January 30, 2020.

In his motion for reconsideration, Respondent seeks reconsideration of the Decision[2] promulgated on October 01, 2019 cancelling his deficiency assessments for failing to properly serve the assessment notices to Petitioner, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Details of Discrepancies dated January 24, 2011, assessing petitioner for deficiency income tax

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1 Docket, pp. 946-955.
2 *Id.*, pp. 923-945.

> and VAT in the total amount of Php3,297,884.16, for calendar year 2007, as well as the Warrant of Garnishment dated April 25, 2016 and Warrant of Distraint and/or Levy dated May 04, 2016, issued by respondent to enforce the collection of the said deficiency tax liabilities are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

This court shall first resolve the procedural issue raised by Petitioner in its Motion to Strike.

Motion to Strike

Petitioner claims that Respondent's Motion for Reconsideration, filed on November 11, 2019 [*sic*][3] was set for hearing on November 19, 2019. However, the said motion was received by Petitioner only on November 27, 2019, or eight (8) days after the scheduled hearing date, which, therefore, violated the three (3)-day notice requirement under Sections 4 and 5 of the Rules of Court. As such, Petitioner posits that Respondent's motion should be treated as a mere scrap of paper and be stricken from the records of the instant case.

This court is not persuaded.

Verily, Sections 4 and 5 of Rule 15 of the Rules of Court provide as follows:

> RULE 15
> MOTIONS
>
> xx xxx xxx
>
> Section 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> **Every written motion required to be heard and the notice of the hearing thereof shall be served in such a**

3 Should be November 12, 2019.

> **manner as to ensure its receipt by the other party at least three (3) days before the date of hearing**, unless the court for good cause sets the hearing on shorter notice. (4a)
>
> Section 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

Indeed, jurisprudence provides that a motion which does not meet the requirements set forth in Sections 4 and 5 of Rule 15 of the Rules of court is considered a worthless piece of paper which the court need not act upon,[4] the said rule is however subject to several recognized exceptions. Perforce, the Supreme Court case of *Vlason Enterprises Corporation v. Court of Appeals, Et. Al.*[5] is instructive on the matter.

> "...Liberal construction of this rule has been allowed by this Court in cases (1) where a rigid application will result in a manifest failure or miscarriage of justice; especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate [to] the degree of his thoughtlessness in not complying with the procedure prescribed."

More so, the Supreme Court in the cases of *Marylou Cabrera v. Felix Ng*[6] and *Jehan Shipping Corporation v. National Food Authority*[7] ruled that there is substantial compliance with Sections 4 and 5 of Rule 15 when the adverse party had been afforded the opportunity to be heard and had filed pleadings in opposition to the subject motion.

From the foregoing, the notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanistic and literal application that renders any deviation inexorably fatal.[8]

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[4] Annie Tan v. Court of Appeals, Et. Al., G. R No. 130314, September 22, 1998.
[5] G.R. Nos. 121662-64, July 06, 1999.
[6] G.R. No. 201601, March 12, 2014.
[7] G.R. Nos. 159750, December 14, 2005.
[8] Vlason Enterprises Corporation v. Court of Appeals, Et. Al., G.R. Nos. 121662-64, July 06, 1999.

In the present case, Petitioner was granted the opportunity to be heard when it was given by the court a period of fifteen (15) days to file its comment on Respondent's Motion for Reconsideration in the Resolution[9] dated November 14, 2019. Thus, with the filing of the subject "Motion to Strike with *Ex Abudante Ad Cautelam* Comment [Re: Motion for Reconsideration dated 11 November 2019]", the purpose behind the 3-day notice requirement is deemed realized.

Having disposed of the procedural issue, this court shall now address the issues raised by Respondent in the subject Motion for Reconsideration.

Motion for Reconsideration

Respondent mainly argues that the recent Supreme Court decided case of *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[10] ("*V.Y. Domingo case*") is on all fours with the present case. Using the said case as basis for his arguments, Respondent claims that Petitioner received certified true copies of the Assessment Notices and the corresponding Formal Letter of Demand with Details of Discrepancies dated January 24, 2011, on May 4, 2016. However, instead of disputing the contents thereof by filing a request for reconsideration or request for reinvestigation within thirty (30) days from receipt of the said copies, Petitioner immediately filed a Petition for Review on the basis of the Warrant of Distraint and/or Levy issued by Respondent. Such act of Petitioner accordingly transgressed the doctrine of exhaustion of administrative remedies.

On the other hand, Petitioner counter-argues that the cited *V.Y. Domingo case* primarily relied on by Respondent for his arguments is inapplicable to the present case. Petitioner points out that there was a Warrant of Distraint and/or Levy issued in the present case which is lacking in the aforementioned *V.Y. Domingo case*. In the said decision, Petitioner therein filed a Petition for Review based only on a Preliminary Collection Letter ("PCL"). Thus, Petitioner insists that this court has jurisdiction over the instant case since the determination of the validity of a Warrant of Distraint and/or Levy is included in the term "other matters" under Section 7(a)(1) of Republic Act No. 1125, as amended.

Petitioner also claims that the present ruling made herein finds support from the following earlier rulings of the Supreme Court in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[11] and *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[12]

[9] Docket, p. 957.
[10] G.R. No. 221780, March 25, 2019.
[11] G.R. No. 162852, December 16, 2004.
[12] G.R. No. 1853871, December 08, 2010.

After due consideration, this court find Respondent's motion bereft of merit.

Parenthetically, Respondent's reliance on the *V.Y. Domingo case* is misplaced there being a total factual dissimilarity between that case and the case at bar. In the cited case, after the Bureau of Internal Revenue ("BIR") issued a Preliminary Assessment Notice ("PAN") against Petitioner therein, after which the latter filed a Request for RE-evaluation/Reinvestigation and Reconsideration. Then, the BIR issued a PCL, and upon notification, Petitioner therein requested the BIR that it be furnished with certified true copies of the subject assessment notices. After receipt of the requested copies, Petitioner therein filed a Petition for Review with the Court of Tax Appeals ("CTA") praying that the assessment notices and PCL be declared null and void. On appeal, the Supreme Court ruled that the CTA had no jurisdiction to entertain the Petition for Review, reasoning that the word "decisions" in Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, has been interpreted to mean the decisions of the Commissioner of the BIR ("CIR") on the protest of the taxpayer against the assessments. The said word does not signify the assessment itself. It is only after the taxpayer questions an assessment and asks the BIR to reconsider or cancel the same that the assessment becomes a "disputed assessment". Thereafter, the CIR must decide, and the taxpayer can appeal to the CTA only upon receipt of the decision of the CIR on the disputed assessment.

Whereas, in the present case, Respondent did not only issue a PAN and a PCL against Petitioner, he likewise issued a Formal Letter of Demand ("FLD"), 1st Notice (informing Petitioner that the assessments issued by the BIR were due for collection), Final Notice before Seizure, Warrant of Garnishment, and Warrant of Distraint and/or Levy. The question in the present Petition for Review is not the disputed assessment but rather the propriety of the issuance and enforcement of Warrant of Garnishment, and Warrant of Distraint and/or Levy.

More so, this Court also found that Respondent failed to discharge the burden of proving that the subject PAN and FLD were properly served to Petitioner, regardless of whether the same were sent in its old address in Sampaloc, Manila or in its new address in Novaliches, Quezon City, thereby rendering the subject assessments null and void. Such finding is, however, not present in the cited *V.Y. Domingo case.* Therefore, Respondent's reliance on the doctrinal pronouncement in the said case was made out of context as the incidents therein are different from the facts obtaining in the case at bar.

At this juncture, this court reiterates its disquisition in the assailed Decision that Respondent's failure to strictly comply with the notice requirements laid down in Section 228 of the National Internal Revenue Code of 1997, as amended and Revenue Regulation No. 12-99, as amended, amounts to the denial of Petitioner's right to due process, effectively voiding the assessments issued. Henceforth, in view of the foregoing discussion, this Court finds no cogent reason to deviate from the conclusions reached in the Assailed Decision.

WHEREFORE, premises considered, Respondent's "Motion for Reconsideration (Re: Decision promulgated on October 01, 2019)" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice