REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

LIFEBANK FOUNDATION, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8836

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

Promulgated:
SEP 20 2017
10:18 a.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration (of the Decision dated June 23, 2017) ("Motion for Reconsideration") filed on July 19, 2017; without comment from respondent despite notice[1] *per* Records Verification Report[2] dated August 22, 2017.

On June 23, 2017, the Court promulgated a Decision[3] ("Assailed Decision"), the dispositive portion of which states:[4]

> **WHEREFORE,** in view of the foregoing, the Petition for Review filed by petitioner Lifebank Foundation, Inc. is hereby **DENIED** due to lack of jurisdiction.
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> **SO ORDERED.**

In its Motion for Reconsideration, petitioner allege that the Court erred in holding that the assessment had become final and

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[1] *Records, CTA Case No. 8836, Vol 2, Resolution,* p. 752.
[2] *Id., Records Verification.*
[3] *Id., Decision,* pp. 702-718.
[4] *Id.,* p. 717.

executory for petitioner's failure to file a protest to the Formal Letter of Demand/Final Assessment Notice ("FLD/FAN") within thirty (30) days from receipt thereof on August 2, 2013. It is petitioner's stance that, while the Memorandum of Assignment dated August 30, 2013[5] ("August 30, 2013 Memorandum") is a mere internal memorandum among Bureau of Internal Revenue ("BIR") officers, the fact remains that it was issued with the end in view of further investigation, thereby removing the final character of the FLD/FAN. Petitioner submits that the referral of its case for reinvestigation, without even receiving its protest to the FLD/FAN, only shows that the BIR itself did not treat the FLD/FAN as the final demand to which petitioner is now required to file a protest under *Section 228 of the 1997 National Internal Revenue Code*[6]*, as amended ("1997 NIRC")*. In the absence of such final demand, petitioner concludes that there is no notice of assessment that can be protested, and thus, there is also no assessment that can become final. Petitioner posits that, instead, it is the Final Notice dated January 14, 2014 which constitutes respondent's final assessment to which it duly protested. Hence, according to petitioner, the assessment had not yet attained finality, and consequently, the Court has jurisdiction to try the present controversy.

Petitioner also asserts that the Court erred in ruling that respondent complied with the mandatory requirement of issuance of a Preliminary Assessment Notice ("PAN") prior to the issuance of the FLD/FAN, notwithstanding that the FLD/FAN was dated April 25, 2013. According to petitioner, citing the case of *Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute), Inc.*[7] and *Commissioner of Internal Revenue v. Apex Chemical Corp.*,[8] the preparation of the FLD/FAN prior to petitioner's receipt of the PAN is tantamount to it not having been served a PAN at all, which is a violation of its constitutionally-guaranteed right to due process; that, pursuant to *Revenue Memorandum Circular No. 11-2014*,[9] the FLD/FAN is supposed to be a denial of a response to the PAN; and that, thus, by signing the FLD/FAN on a date before the issuance of the PAN and petitioner's right to reply to the PAN had lapsed,

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[5] August 30, 2014 *per* petitioner's Motion for Reconsideration (of the Decision dated June 23, 2017). *See Records, Motion for Reconsideration, par. 5*, p. 722.
[6] Republic Act No. 8424, January 1, 1998.
[7] CTA *EB* Case No. 1151, February 17, 2015.
[8] CTA *EB* Case Nos. 1382 and 1387, October 14, 2016.
[9] Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as amended by RR 18-2013, February 18, 2014.

petitioner was deprived of its right granted by law to respond to the PAN. Further, petitioner alleges that respondent acted in an arbitrary and capricious manner when the FLD/FAN was prepared prior to the issuance of the PAN and the opportunity of petitioner to reply thereto; and that, the FLD/FAN, being void, cannot sustain respondent's effort to collect as stated in the Final Notice.

Petitioner argues that, it is in the height of injustice that it was assessed for income tax ("IT") and value-added tax ("VAT") when it is clearly exempt from income tax under *Section 30 of the 1997 NIRC,* which exemption was confirmed in the *Ruling No. 021-05 ("Ruling")* issued by no less than respondent; and that, the *Ruling* validly issued to petitioner, cannot be revoked or overturned by the mere allegation of deficiency income taxes in the FLD/FAN or Final Notice.

Petitioner reiterates that it is not liable for deficiency IT, VAT, and compromise penalties. As regards IT, petitioner maintains that it is exempt under *Section 30 of the 1997 NIRC* being a non-stock and non-profit organization rendering socio-cultural and economic services to the poor; that, petitioner's IT exemption is confirmed in the *Ruling* which was not validly revoked; and that, even assuming, but not granting, that the *Ruling* has been validly revoked, the retroactive application of such revocation violates *Section 246 of the 1997 NIRC.* Petitioner also submits that it correctly claimed as deduction for impairment losses the amount of Php87,480,989.00 for having actually become worthless; and that, assuming that the impairment losses did not actually become worthless, it is erroneous for the BIR to add the same to its alleged deficiency taxable income because petitioner did not deduct it from its taxable income, as in fact there is no income subject to tax from which the same can be deducted.

Anent the alleged deficiency VAT, petitioner reiterates that its interest income was derived from the pursuit of its primary function of uplifting the socio-cultural and economic services to the poor, hence, not subject to VAT; that, with respect to Membership Fees & Dues and Other Income, the BIR did not provide the factual and legal basis for imposing VAT thereon, thereby violating *Section 228 of the 1997 NIRC;* that, even assuming that the assessment for Membership Fees & Dues is valid, the same was not derived from the sale of services or goods in the course of trade or business; and that, it is erroneous for the BIR to subject to VAT its interest income from bank deposits since there was no actual sale of goods or services which can serve as the basis for the imposition thereof.

Finally, petitioner reiterates that there is no basis for the BIR to impose compromise penalty since it did not agree or conform to the imposition of the same.

The Court will now resolve.

After careful consideration, the Court finds no new or substantial matter, or any compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Consequently, the Court finds petitioner's Motion for Reconsideration devoid of merit. Nevertheless, the Court will expound on the arguments raised, particularly on the finality of the assessment which renders the Court devoid of jurisdiction to try the present controversy, if only to reinforce the discussion in the Assailed Decision.

To recall, the FLD/FAN was received by petitioner through Mr. Roberto H. Alfaras on August 2, 2013.[10] Records reveal that no protest to the FLD/FAN was filed by petitioner.

Section 228 of the 1997 NIRC, as implemented by *Section 3.1.5 of Revenue Regulations ("RR") No. 12-1999*[11], is explicit: failure to file a valid protest against the FLD/FAN within thirty (30) days from receipt thereof renders the assessment final, executory, and demandable. The pertinent provisions state the following:

> SEC. 228. *Protesting of Assessment.* -
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> xxx xxx xxx
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> <u>Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment</u> in such form and manner as may be prescribed by implementing rules and

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[10] *Records, Vol. 2, Exhibit "P-10," Formal Letter of Demand/Final Assessment Notice ("FLD/FAN"),* pp. 532-543; *BIR Records, Exhibit "R-20," FLD/FAN,* pp. 306-317.

[11] 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.

> regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; <u>otherwise, the assessment shall become final.</u>
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> xxx xxx xxx
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> 3.1.5 *Disputed Assessment.* - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.
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> xxx xxx xxx
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> <u>If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable</u>.
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> xxx xxx xxx[12]

The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.[13] In *Zamboanga Forest Managers Corporation vs. Pacific Timber and Supply Co.,*[14] the Supreme Court has ruled, *viz.:*

> Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also 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

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[12] Underscoring ours.
[13] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010, 635 SCRA 162.
[14] G.R. No. 173342, October 13, 2010, 633 SCRA 82.

> judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[15]

Indubitably, the Court of Tax Appeals ("CTA") is a court of special jurisdiction, with power to review by appeal decisions involving disputed assessments. However, even if vested with special jurisdiction, the CTA is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority.[16] Relative thereto, when the assessment has already attained finality, the Court has no jurisdiction over the assessment, and shall dismiss the claim.

Petitioner relies on the issuance of the August 30, 2013 Memorandum insisting that, considering that its case was referred for reinvestigation notwithstanding the fact that no protest was yet filed, the BIR itself did not treat the FLD/FAN as the final demand. According to petitioner, if there is no final demand, there is nothing to protest to, and consequently, its failure to protest to the FLD/FAN within thirty (30) days from receipt thereof does not render the assessment final and executory.

It cannot be overemphasized, that when petitioner received the August 30, 2013 Memorandum on September 5, 2013, the thirty (30) day period prescribed by law to protest to the FLD/FAN had already lapsed. Hence, prior to receipt of said memorandum, in so far as petitioner is concerned, the FLD/FAN remains to be the final demand which must be protested. The Court finds it incredible for petitioner to assume that the FLD/FAN is not the final demand contemplated under the above *Section 228 of the 1997 NIRC* and *Section 3.1.5 of RR No. 12-1999*, and therefore justify its non-filing of the required protest, when in fact, the memorandum was received by it four (4) days after the lapse of the thirty (30)-day period. Instead of waiting for the FLD/FAN to be recalled or cancelled, petitioner should have taken the necessary means to prevent the assessment from attaining finality by timely filing a request for reconsideration or reinvestigation. Failing in this regard, petitioner has no one else to blame but itself.

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[15] Citations omitted.

[16] *Ker & Company, Ltd. v. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962, 4 SCRA 160.

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In view of the finality of the assessment, the Court finds it unnecessary to discuss the other issues and arguments proffered by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated June 23, 2017 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice