REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ADMORLINA L. FONTEJON,
Respondent.

CTA EB No. 1813
(CTA Case No. 9314)

Present:

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

Promulgated:

FEB 11 2020 11:47 a.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

Challenged in petitioner's Motion for Reconsideration[1] dated June 11, 2019, is the Decision[2] of May 28, 2019, disposing the case as follows:

> **WHEREFORE**, the Petition for Review dated March 28, 2018 filed by petitioner Commissioner of Internal Revenue is **DENIED**, for lack of merit.
>
> **SO ORDERED**.

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1 *Rollo*, pp. 72-88.
2 Ibid. at pp. 56-71.

Petitioner insists that since there was discrepancy of 90.63% corresponding to alleged undeclared sales after matching the data of the Bureau of Internal Revenue (BIR)'s third-party sources as against respondent's tax returns, such significant under-declaration of sales is *prima facie* evidence of falsity/fraud, justifying the application of the ten-year extraordinary prescriptive period under Section 222(a) of the National Internal Revenue Code (NIRC), as amended.

He further claims that his subordinates were clothed with legal competence to audit or examine respondent as Section 6(A) of the NIRC, as amended, merely requires that a notice of audit or investigation be served against her, which was done through the issuance of the subject LN. Further, the same provision of the Tax Code does not require that a valid Letter of Authority (LOA) be issued and served against her. Moreover, since he himself issued the subject LN and not a Regional Director, a LOA may be dispensed with. In closing, petitioner claims that the subject deficiency tax assessments predicated upon the subject LN is valid and binding upon respondent.

Petitioner as well points out that the fact that all the BIR notices were sent to respondent's registered address at Phase II, Grand Meadows Subdivision, Batanga, Valencia City, Bukidnon while at the same time denying receipt of the Preliminary Assessment Notice (PAN) places her in estoppel in disclaiming receipt thereof, citing Article 1431 of the Civil Code, as well as jurisprudence[3] as authorities.

Although respondent denies receipt of the PAN, she nevertheless admits that she was duly served with the Formal Assessment Notices and Formal Letter of Demand (FAN/FLD) and was in fact able to ventilate her defenses via her administrative protest to the FAN/FLD. This indicates observance of the due process requirement in the issuance of the assailed assessment under Section 228 of the NIRC, as amended.

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[3] *Kalalo vs. Luz,* G.R. No. L-27782, July 31, 1970, 145 Phil. 153 (1970).

Despite directive, respondent failed to file her comment/opposition to the instant Motion.[4]

A review of the points raised by petitioner in his Motion for Reconsideration shows that he is merely invoking the very same arguments set forth in his Petition for Review[5] dated March 28, 2018, all of which were meticulously discussed and passed upon by the Court *En Banc* in the challenged Decision of May 28, 2019. Without any substantial matter warranting modification, much less reversal of the challenged Decision dated May 28, 2019, petitioner's Motion for Reconsideration dated June 11, 2019 is **DENIED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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4 Records verification report dated September 16, 2019. Id. at p. 93.
5 *Rollo,* pp. 6-18.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice