Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 11, 2023**, *which reads as follows:*

"G.R. No. 249045 (Commissioner of Internal Revenue, *Petitioner* **v. Parity Packaging Corporation,** *Respondent*).— This Petition for Review on *Certiorari*[1] oppugns the Decision[2] and the Resolution[3] of the Court of Tax Appeals *En Banc,* in CTA EB No. 1783, which affirmed the cancellation of respondent's deficiency income tax assessment while upholding its liability for deficiency value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST) for taxable year 2010, and which denied petitioner's Motion for Reconsideration[4] thereof, respectively.

The factual backdrop of this case is uncomplicated.

Sometime in 2012, Parity Packaging Corporation (respondent) received Letter of Authority No. 116-2012-00000016, which authorized Bureau of Internal Revenue revenue officers to conduct an examination of its books of accounts and accounting records for taxable year 2010.[5] Eventually, respondent received a Notice of Informal Conference and then a Preliminary Assessment Notice, which contained the initial audit findings.[6] On April 19, 2013, respondent executed a Waiver of the Defense of Prescription (Waiver) the Commissioner of Internal Revenue (petitioner) accepted on May 2, 2013. Consequently, petitioner's right to issue an assessment against respondent was extended until December 31, 2014.[7] On November 26, 2013, respondent

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1 *Rollo,* pp. 76-95.

2 *Id.* at 104-118. The Decision dated March 5, 2019 was penned by Court of Tax Appeals Associate Justice Catherine T. Manahan, with the concurrence of Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban. Presiding Justice Roman G. Del Rosario issued a Concurring and Dissenting Opinion (*id.* at 119-121).

3 Id. at 123-126. The Resolution dated August 30, 2019 was penned by Court of Tax Appeals Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Jean Marie A. Bacorro-Villena. Associate Justice Catherine T. Manahan rendered a Concurring and Dissenting Opinion (*id.* at 127-132). Associate Justice Maria Rowena Modesto-San Pedro on official business.

4 *Id.* at 27-50.

5 *Id.* at 105.

6 *Id.*

7 *Id.* at 109.

received a Final Assessment Notice and Formal Letter of Demand, finding it liable for deficiency income tax, VAT, EWT, and DST for the period ending December 31, 2010.[8] Thereafter, respondent filed a protest, but the same was denied in a Final Decision on Disputed Assessment, which maintained respondent's deficiency tax liabilities in the following amounts:[9]

Tax Type	Amount
Income Tax	₱ 200,123,786.58
VAT	113,075,438.11
EWT	188,576.27
DST	13,288,101.23
Total	**₱ 326,675,902.19**

Undeterred, respondent filed a Petition for Review with the Court of Tax Appeals on May 23, 2014,[10] which was later amended.

In the Decision[11] of the Court of Tax Appeals First Division, the Amended Petition for Review was partially granted by cancelling the deficiency income tax assessment against respondent but upholding its liability for VAT, EWT, and DST, albeit in reduced amounts.[12]

Petitioner moved for reconsideration, but the same was rejected by the First Division in the Resolution dated 22 January 2018.[13] Petitioner then elevated the case to the Court of Tax Appeals *En Banc*.[14]

On the issue on prescription, petitioner argued that the Court of Tax Appeals First Division erred in ruling that its right to assess respondent for deficiency VAT for the first quarter of 2010 and deficiency EWT for January to March 2010 had already prescribed.[15] It postulated that there was falsity in respondent's tax returns which necessitated the application of the extraordinary ten-year period to assess, especially in the case of respondent's liability for deficiency DST, given that no DST returns were filed. Alternatively, petitioner avouched that the assessment for deficiency EWT cannot prescribe, being in the nature of a penalty for the withholding agent's failure to withhold and/or remit funds to the government.[16] On the substantive aspects, petitioner insisted that the Court of Tax Appeals First Division erred in cancelling the deficiency income tax assessment and in modifying respondent's liabilities for deficiency VAT, EWT, and DST.[17]

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8 *Id.* at 106.
9 *Id.*
10 *Id.*
11 Note: Not found in the *rollo*, but referenced in the CTA *En Banc*'s Decision dated March 5, 2019 (see *id.* at 104 and 106-107).
12 *Rollo*, pp. 106-107.
13 *Id.* at 107.
14 *Id.*
15 *Id.* at 109.
16 *Id.*
17 *Id.* at 108.

In the challenged Decision, the Court of Tax Appeals *En Banc* denied the petition for lack of merit and upheld the rulings of its First Division, but modified the imposition of interests pursuant to the provisions of Republic Act No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Act, as implemented by Revenue Regulations No. 21-2018.[18] The Court of Tax Appeals *En Banc* held that by the time the purported waiver took effect, the petitioner's right to assess respondent for deficiency VAT for the first quarter of 2010 and deficiency EWT for the months of January to March 2010 had already prescribed. Petitioner did not present any evidence to prove the supposed falsity of respondent's returns, hence, the ten-year period could not apply. With regard to the DST assessment, the Court of Tax Appeals *En Banc* noted that its First Division actually agreed with petitioner that this had not prescribed for respondent's failure to file the necessary tax returns.[19] The Court of Tax Appeals *En Banc* also upheld the correctness of the Court of Tax Appeals First Division's recomputation of respondent's remaining tax liabilities based on a thorough and circumspect evaluation of the evidence presented.[20]

Petitioner's bid for reconsideration[21] of the foregoing Decision having been denied in the assailed Resolution, it lodged the present Petition before this Court.

At its core, the pivotal issue for the Court's resolution is whether or not the Court of Tax Appeals *En Banc* erred in only holding respondent liable for reduced deficiency VAT, EWT, and DST for taxable year 2010.

After a meticulous evaluation of the surrounding facts and circumstances obtaining in the case at bench, the Court finds that the Court of Tax Appeals En Banc committed no error in issuing the challenged rulings. Perforce, the Petition must fail.

Petitioner persistently exclaims that its right to assess respondent for deficiency VAT and EWT for the first quarter of 2010 had not yet prescribed. Petitioner clings on to the theory that the extraordinary ten-year period under Section 222(a) of the National Internal Revenue Code (NIRC) should apply in this case given that respondent filed false returns and failed to file its DST returns. So, too, petitioner maintains that, with regard to the EWT assessment, prescription could not set in since respondent was being assessed in his capacity as a withholding agent.[22]

Petitioner's postulation fails to inspire assent.

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[18] *Id.* at 116-117.
[19] *Id.* at 109-110.
[20] *Id.* at 110-116.
[21] *Id.* at 27-50.
[22] *Id.* at 81-82.

Under Section 203[23] of the National Internal Revenue Code, the Bureau of Internal Revenue must generally assess any deficiency internal revenue taxes within three years after the last day prescribed by law for the filing of the return.

Petitioner does not dispute that if the ordinary three-year period is applied, its right to assess respondent for deficiency VAT and EWT for the first quarter of 2010 already prescribed; rather, it insists that the extraordinary period under Section 222(a)[24] is applicable. However, Section 222(a) is a mere exception to the general rule and requires that there be proof that the taxpayer filed a false or fraudulent return.

In *Commissioner of Internal Revenue v. Unioil Corp.*,[25] the Court held that "[i]n determining whether the return filed is false or fraudulent, jurisprudence has consistently held that **fraud is never imputed**. The Court has refrained from sustaining findings of fraud upon circumstances which, at most, create only suspicion. The mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion."[26] Bare allegation of falsity or fraudulency, without proof, is insufficient to remove the present case outside the purview of the three-year prescriptive period under Section 203.[27]

In this case, the Court of Tax Appeals *En Banc* astutely observed that petitioner "did not present any evidence to prove the falsity of respondent's tax returns in order to justify the application of the ten-year prescriptive period."[28] Necessarily, there is no basis for applying Section 222 (a) in this case.

Likewise unconvincing is petitioner's assertion that respondent's non-filing of its DST returns should trigger the ten-year assessment period for all of its deficiency tax liabilities. A plain reading of both Sections 203 and 222 would show that the prescriptive periods therein are reckoned from the last day of filing of **each return for each type of tax**. By no stretch of imagination can it be concluded that the period of one should apply to all.

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23 SECTION 203. Period of Limitation Upon Assessment and Collection.— Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

24 SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.—
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

25 G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].

26 Emphasis supplied.

27 See *id.*

28 *Rollo*, p. 110.

The Court cannot lend credence to petitioner's avowal that assessments for withholding taxes are imprescriptible for being in the nature of a penalty.

This issue has already been laid to rest in the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,[29] where the Court declared that withholding taxes are still internal revenue taxes covered by the period under Section 203 of the National Internal Revenue Code. "The word 'penalty' was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent."[30]

As to petitioner's other argument regarding the correctness of the Court of Tax Appeals *En Banc*'s computation of respondent's deficiency income tax, VAT, EWT, and DST, suffice it to say that these are factual questions requiring the re-examination of the evidence presented during trial and are beyond the purview of a petition for review on *certiorari* under Rule 45 of the Rules of Court.[31] While there are exceptions to this rule,[32] none have been shown to apply in this case.

It is oft-repeated that the findings of fact of the Court of Tax Appeals are generally regarded as final, binding, and conclusive upon this Court. "The findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence, or when the judgment is premised on a misapprehension of facts, or when the lower courts overlooked certain relevant facts which, if considered, would justify a different conclusion."[33]

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated March 5, 2019 and the Resolution dated August 30, 2019 of the Court of Tax Appeals *En Banc* in CTA EB No. 1783 are **AFFIRMED**.

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29 845 Phil. 568 (2019) [Per J. Reyes, Jr., Second Division]

30 *Id* at 583.

31 See *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].

32 *Id.*

33 See *Commissioner of Internal Revenue v. East Asia Utilities Corp.*, G.R. No. 225266, November 16, 2020 [Per. J. Lopez, Second Division] at 14. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

SO ORDERED."

By authority of the Court:

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Division Clerk of Court JB 2/16/23

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