



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 27, 2023** which reads as follows:*

“G.R. No. 236789 (Factory Automation and Instrumentation Corp. v. Commissioner of Internal Revenue). – This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated July 7, 2017 and Resolution³ dated January 3, 2018 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1335. The CTA *En Banc* denied the petition for review and motion for reconsideration of petitioner Factory Automation and Instrumentation Corp. (petitioner) and affirmed the Decision⁴ dated February 24, 2015 and Resolution⁵ dated July 6, 2015 of the CTA Third Division in CTA Case No. 8518.

The CTA Third Division dismissed the petition for review filed by petitioner for lack of jurisdiction.⁶

The Facts

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in engineering services.⁷

¹ *Rollo*, pp. 11-35.

² *Id.* at 36-57. Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Presiding Justice Del Rosario wrote a separate concurring opinion. Associate Justice Lovell R. Bautista was on leave.

³ *Id.* at 58-61. Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan.

⁴ Not attached to the petition, but a copy was retrieved from the CTA website <https://cta.judiciary.gov.ph> on February 5, 2023. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino.

⁵ Not attached to the petition, but mentioned in the CTA *En Banc* Decision dated July 7, 2017. See *rollo*, pp. 36-37.

⁶ As mentioned in the CTA *En Banc* Decision, *id.*

⁷ *Rollo*, p. 13.

On August 3, 2009, the Bureau of Internal Revenue (BIR) Revenue Region No. 7, Revenue District Office No. 28 issued Tax Verification Notice (TVN) No. 2003-00130732⁸ authorizing Revenue Officer (RO) Ernesto B. Penullar to verify petitioner's supporting documents and/or pertinent records of all internal revenue taxes covering taxable year (TY) 2008. On the same date, RO Penullar and Ester C. Maneja issued a First Request for Presentation of Records.⁹

On August 18, 2009, the BIR issued a Second Request for Presentation of Records.¹⁰ On September 2, 2009, Revenue District Officer (RDO) Benito B. Wong, issued a Final Notice Before Issuance of Subpoena Duces Tecum.¹¹ On October 20, 2009, Legal Division Chief, Atty. Jose Ric A. Cabrera, issued a Subpoena Duces Tecum.¹² On December 5, 2009, RDO Wong issued a Notice of Informal Conference.¹³

On May 23, 2011, petitioner received a Preliminary Assessment Notice (PAN)¹⁴ dated May 14, 2011, alleging that it is liable to pay an aggregate amount of ₱428,650.92 representing alleged deficiency Income Tax, Value Added Tax (VAT), Expanded Withholding Tax (EWT), Compromise Penalty, and Interest. On June 8, 2011, petitioner submitted a Protest Letter¹⁵ dated June 7, 2011 against the PAN.¹⁶

On May 16, 2012, petitioner received a Preliminary Collection Letter¹⁷ (PCL) dated May 8, 2012, issued by Assistant RDO Buenaventura C. Lomibao, alleging that an Assessment Notice dated June 14, 2011 was previously issued against petitioner, and that the BIR is collecting internal revenue tax liabilities which remain unpaid in the aggregate amount of ₱438,441.13, representing alleged deficiency Income Tax, VAT, EWT, Compromise Penalty, and Interest. On June 14, 2012, petitioner filed an Administrative Protest Letter¹⁸ against the PCL issued by respondent.¹⁹

On June 20, 2012, petitioner received a Final Notice Before Seizure²⁰ (FNBS) dated May 31, 2012.²¹

⁸ Not attached to the petition.

⁹ *Rollo*, p. 37.

¹⁰ Not attached to the petition.

¹¹ Not attached to the petition.

¹² Not attached to the petition.

¹³ *Rollo*, pp. 37-38.

¹⁴ Not attached to the petition.

¹⁵ Not attached to the petition.

¹⁶ *Rollo*, p. 38.

¹⁷ Not attached to the petition.

¹⁸ Not attached to the petition.

¹⁹ *Rollo*, p. 38.

²⁰ Not attached to the petition.

²¹ *Rollo*, p. 38.

On July 19, 2012, petitioner filed a Petition for Review²² with the CTA, praying that respondent Commissioner of Internal Revenue (respondent) be permanently enjoined from enforcing the FNBS and/or Warrant of Garnishment/Levy against petitioner and the tax assessments for TY 2008 issued against petitioner be declared void and cancelled, and withdrawn.²³ It claimed that it was not afforded due process because it did not receive any FAN or Formal Letter of Demand (FLD) before the issuance of the FNBS dated May 31, 2012; that respondent's right to assess and collect has prescribed since the PCL was received by petitioner only on May 16, 2012; and that the assessment was void.²⁴

In its Answer,²⁵ respondent counters that petitioner was afforded due process; the PAN and FAN were both served personally and sent through registered mail; the FNBS did not dispose the Administrative Protest filed by petitioner; and the instant petition was prematurely filed.²⁶

The CTA Third Division, in a Decision dated February 24, 2015, dismissed the Petition for Review that petitioner filed. It found that petitioner received the FAN and FLD with attached Details of Discrepancies personally and through registered mail. It also found that the FAN became final and executory on June 21, 2011 for petitioner's failure to file a protest to the FAN despite receipt thereof. Thus, when the petition was filed on July 19, 2012, the FAN was already final and unappealable.²⁷ As such, the CTA has no jurisdiction over the instant case.

Petitioner moved for reconsideration,²⁸ which the CTA Third Division denied in its Resolution²⁹ dated July 6, 2015.³⁰

Petitioner elevated the case to the CTA *En Banc*.

In its Decision³¹ dated July 7, 2017, the CTA *En Banc* denied the Petition for Review filed by petitioner and affirmed the CTA Third Division. It found that while personal service of the FAN on petitioner was not valid for lack of proof of the designation and authority of the recipient, Freddie Masula, to act for and in behalf of petitioner, respondent was able to prove that the FAN and FLD were sent through registered mail and were validly received by petitioner through Irene Masula. Considering that Irene Masula previously received the PAN addressed to petitioner, and petitioner was able

²² Not attached to the petition.

²³ CTA Third Division Decision dated February 24, 2015, p. 1. The CTA Decision is not part of the *rollo*, but an electronic copy was downloaded from the website. See footnote 4.

²⁴ CTA Third Division Decision dated February 24, 2015, p. 5.

²⁵ Not attached to the petition.

²⁶ *Rollo*, p. 38.

²⁷ *Id.* at 40.

²⁸ Not attached to the Petition.

²⁹ Not attached to the Petition.

³⁰ *Rollo*, p. 40.

³¹ *Id.* at 36-57.

to file its protest to the said PAN on June 8, 2011, the CTA *En Banc* was convinced that Irene Masula had authority to bind petitioner in receiving the FLD and FAN by registered mail, either by acquiescence or through estoppel.³²

As to petitioner's claim that the assessments have prescribed, the CTA *En Banc* deemed invalid the deficiency VAT assessment for the 1st quarter of 2008, and the deficiency EWT assessments for the months of January to May of the same year, for being issued beyond the three-year prescriptive period stated in Section 203 of the National Internal Revenue Code of 1997. However, since petitioner did not show as to which portion of the assessments pertain to the prescribed periods, and all presumptions are in favor of the correctness of tax assessments, the CTA *En Banc* treated all of the subject tax assessments as referring to the unprescribed periods.³³

Petitioner likewise moved for reconsideration,³⁴ which the CTA *En Banc* denied in its Resolution³⁵ dated January 3, 2018.

Hence, this Petition.

Petitioner claims that the CTA *En Banc*'s resort to equity and estoppel is an admission that there was no actual service of notice upon an authorized representative of petitioner. It maintains that it was denied due process because it did not receive any FAN or FLD. It argues that acquiescence or estoppel is not sufficient to satisfy the requirement under Revenue Regulations No. 12-99 (RR No. 12-99), nor should it be held supreme over the right to due process.³⁶

In its Comment,³⁷ respondent argues that petitioner is estopped from claiming that it did not receive the FAN and FLD since Irene Masula consistently received the PAN, FLD, and FAN sent through registered mail to petitioner's office address, and petitioner was even able to file a protest against the PAN. Petitioner's failure to explain or prove how it had knowledge of the PAN subject of its protest shows its acquiescence to the authority of Irene Masula to receive notices in behalf of petitioner.³⁸ As such, petitioner was not denied due process. Respondent further argues that the principles of equitable estoppel form part of our law, pursuant to Article (Art.) 1432³⁹ of

³² Id. at 49.

³³ Id. at 50-53.

³⁴ Not attached to the Petition.

³⁵ *Rollo*, pp. 58-61.

³⁶ Id. at 26-27.

³⁷ Id. at 77-91.

³⁸ Id. at 84.

³⁹ Art. 1432. The principles of estoppel are hereby adopted insofar as they are not in conflict with the provisions of this Code, the Code of Commerce, the Rules of Court and special laws.

the Civil Code. Consequently, the principles of equitable estoppel need not be written in RR No. 12-99 for them to be applied or enforced.⁴⁰

In its Reply,⁴¹ petitioner simply reiterated its petition.

The Court's Ruling

The petition is devoid of merit.

The issue on the receipt or non-receipt of the Final Demand Letter and Assessment Notice is a factual question that is not generally proper in a Rule 45 petition before this Court.⁴²

Petitioner does not deny that Irene Masula received the FAN and FLD sent *via* registered mail. Petitioner nonetheless argues that Irene Masula is not its authorized representative when it comes to receiving notices on its behalf, and that the principle of estoppel should not be applied herein.⁴³

Petitioner is mistaken. The principle of estoppel may be applied in this case.

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his or her own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied upon.⁴⁴ It has been applied wherever and whenever special circumstances of a case so demand.⁴⁵ This Court has applied the principle of estoppel on the part of the taxpayer in several tax cases.⁴⁶

Here, petitioner is estopped from claiming that it did not receive the FAN and FLD sent through registered mail because of Irene Masula's alleged lack of authority to receive the same. As the CTA *En Banc* observed, Irene Masula previously received the PAN addressed and sent to petitioner through registered mail. Petitioner was thereafter able to file a protest to the PAN on June 8, 2011.⁴⁷

⁴⁰ *Rollo*, p. 85.

⁴¹ *Id.* at 94-101.

⁴² *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.

⁴³ *Rollo*, p. 96.

⁴⁴ *Makati Tuscan Condominium Corporation v. Multi-Realty Development Corporation*, 830 Phil. 1, 20-21 (2018), citing *Philippine National Bank v. Court of Appeals*, 183 Phil. 54, 63 (1979).

⁴⁵ *Id.* at 21, citing *Philippine National Bank v. Court of Appeals*, *supra* at 63-64.

⁴⁶ *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, *supra*. See also *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, 821 Phil. 664, 676-678 (2017); and *Commissioner of Internal Revenue v. Next Mobile, Inc.*, 774 Phil. 428, 444-445 (2015).

⁴⁷ *Rollo*, p. 49.

Petitioner did not contest the authority of Irene Masula to receive the PAN. It cannot now claim that the same person is unauthorized to receive the FAN, when it acted on the PAN that Irene Masula previously received.

Moreover, respondent was able to prove that the FAN was released, mailed, and sent to petitioner by presenting the following: (1) Transmittal list of BIR Revenue Region No. 7, showing that the FAN with registry receipt number 4298 was sent on June 15, 2011; (2) a certification issued by the postmaster of Novaliches Post Office dated July 1, 2013, stating that the “REGISTERED LETTER No. 4298” addressed to petitioner was received by Ferdinand P. Pacada, assigned Letter Carrier for delivery on June 21, 2011, and duly received by Irene Masula on the same date; (3) Arnold C. Larrosa, who stated that he mailed the PAN and FAN; and (4) Ferdinand P. Pacada, who testified that he delivered the letter with registry receipt no. 4298 and presented a copy of a portion of this delivery book showing that said letter was received by Irene Masula.⁴⁸

With the foregoing evidence presented by respondent, it became incumbent upon petitioner to show by indubitable evidence that it did not receive the FAN and FLD. Bare denial of receipt of the FAN will not suffice.⁴⁹

In *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,⁵⁰ this Court cited the case of *Mindanao Terminal and Brokerage Service, Inc. v. Court of Appeals*,⁵¹ wherein We held that as between the denial by a party of its receipt of notices of registered mail, and the assertion of an official whose duty is to send notices, the latter prevails:

In *Mindanao Terminal and Brokerage Service, Inc. v. Court of Appeals*, this Court upheld the service by registered mail of a judgment upon a front desk receptionist at the condominium where the counsel of a party was holding his office. This Court held that as between the denial by a party of its receipt of notices of registered mail, and the assertion of an official whose duty is to send notices — which assertion is fortified by the presumption that the official duty has been regularly performed — the latter prevails:

As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose duty is to send notices, which assertion is fortified by the presumption that the official duty has been regularly performed, the choice is not difficult to make. As shown in the records, the postmaster included in his certification the manner, date and the recipient of the delivery, a criterion for

⁴⁸ Id. at 48-49.

⁴⁹ *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, supra.

⁵⁰ Id.

⁵¹ 693 Phil. 25, 39-40 (2012).

the proper service of judgment which this Court enunciated in *Santos v. Court of Appeals*, viz.:

Clearly then, proof should always be available to the post office not only of whether or not the notices of registered mail have been reported delivered by the letter carrier but also of how or to whom and when such delivery has been made. Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made.

An examination of the postmaster's certification shows that:

. . . registered letter No. 6270-B was received by Virgie Cabrera on 4 December 2002.

This certification, the form of which came from the Supreme Court, and which only needs to be filled-up by the postmaster, to the mind of this Court, satisfies the requirement stated in *Santos*. (Citations omitted)⁵²

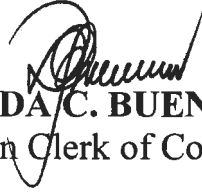
Here, petitioner simply denied receiving the FAN by stating that Irene Masula is not its authorized representative. However, as discussed, petitioner is estopped from claiming that Irene Masula is not its representative authorized to receive notices on its behalf.

WHEREFORE, the Petition for Review on *Certiorari* filed by Factory Automation and Instrumentation Corp. is **DENIED**. The Decision dated July 7, 2017 and the Resolution dated January 3, 2018 of the Court of Tax Appeals *En Banc* in CTA EB No. 1335 are **AFFIRMED**.

⁵² *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, supra.

SO ORDERED.”

By authority of the Court:



LIBRADA C. BUENA
Division Clerk of Court *ms/m*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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