

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

**BUREAU OF INTERNAL
REVENUE,**

Petitioner,

CTA EB NO. 2633

(CTA Case No. 9992)

Present:

-versus-

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

**MEGACONSTRUCT GROUP,
INC.,**

Respondent.

Promulgated:

FEB 0 1 2024

3:26 pm

X- - - - -

D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review*¹ filed by petitioner Bureau of Internal Revenue (BIR) on June 8, 2022 which prays for the reversal and setting aside of the CTA Second Division's *Decision* dated December 2, 2021² and *Resolution* dated May 17, 2022,³ and the entry of a new judgment denying respondent's *Petition for Review* and ordering it to pay the alleged deficiency taxes.

The Parties

Petitioner BIR is the government instrumentality or agency of the National Government under the Executive Department, headed by its Commissioner, that is tasked with

¹ *Rollo*, CTA EB No. 2633, pp. 1-19.

² *Id.*, pp. 23-48.

³ *Id.*, pp. 50-62. *gn*

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implementing the National Internal Revenue Code (NIRC), and in the process, assess and collect domestic taxes from persons liable to pay taxes under the said NIRC.⁴

Respondent Megaconstruct Group, Inc. (MGI) is a domestic corporation with current principal office at Blk. 8, Lot 4 King Philip St., Royal Subd., Bulihan, Malolos City, Province of Bulacan, 3000.⁵

The Facts

Respondent MGI was initially registered, for taxation purposes, with petitioner BIR's Revenue District Office (RDO) No. 36 in Palawan, but is now registered in RDO No. 25A of Plaridel, Bulacan.⁶

On August 3, 2011, respondent filed the letter dated July 21, 2011 with RDO No. 36, informing petitioner of its change of address from 42 Manga Ave., Poblacion, Narra, Palawan, to Lot 4 Block 8 King Philip St. Royale Estates Subd., Bulihan, Malolos City, Bulacan.⁷

Subsequently, on October 23, 2012, respondent filed another letter dated August 15, 2012 with the same RDO, submitting the Memorandum dated July 30, 2012 issued by Revenue Officer (RO) Marita P. Panteriori of RDO No. 25A, Plaridel, Bulacan, recommending the approval of the transfer of registration of respondent to Bulacan.⁸

The *Letter of Authority* (LOA) dated November 3, 2015 signed by Regional Director Araceli I. Francisco for taxable year 2014 was issued, authorizing the examination of respondent's books of accounts and other accounting records.⁹

On June 20, 2017, respondent filed the letter dated June 16, 2017 addressed to Officer-In-Charge (OIC)-Revenue District Officer Vicente P. Gamad of RDO No. 36, requesting

⁴ *Rollo, Decision* dated December 2, 2021, pp. 23-24.

⁵ *Id.* at p. 23.

⁶ *Id.* at p. 24.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* 

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that all letters to respondent in relation to the LOA be addressed and delivered to its office address at Bulacan.¹⁰

On March 27, 2018, petitioner issued a *Preliminary Assessment Notice* (PAN) against respondent for deficiency income tax for taxable year (TY) 2014, indicating therein the latter's former Palawan address.¹¹

Thereafter, petitioner issued the *Final Letter of Demand* (FLD) with attached Assessment Notices (FAN), all dated April 13, 2018, against respondent, requesting the latter to pay deficiency income tax for TY 2014, in the aggregate amount of ₱2,947,550.37, including compromise penalty. Just as in the above-stated PAN, petitioner used respondent's former Palawan address.¹²

Respondent received the *Preliminary Collection Letter* (PCL) dated October 23, 2018. Notably, in the said PCL, petitioner now indicates respondent's address in Bulacan.¹³

Subsequently, respondent received the *Final Notice Before Seizure* (FNBS) dated November 14, 2018, which likewise indicates its address in Bulacan.¹⁴

On December 19, 2018, respondent filed its letter with petitioner, protesting the said PCL and FNBS, and requesting for reconsideration and/or reinvestigation of the same.¹⁵

On December 21, 2018, respondent filed its *Petition for Review* in the Court in Division.¹⁶

After the trial, the Court in Division ruled in favor of respondent under the Assailed Decision. The dispositive portion of which reads as follows:¹⁷

“WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED.** Accordingly, the subject income tax assessment, including

¹⁰ *Rollo, Decision* dated December 2, 2021, p. 24.

¹¹ *Id.* at p. 25.


¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at p. 47. 

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the imposed compromise penalty, for taxable year 2014, in the aggregate amount of ₱2,947,550.37 are declared as **INVALID**, and therefore, is **CANCELLED** and **SET ASIDE**.

Moreover, the PCL dated October 23, 2018 and FNBS dated November 14, 2018 issued against petitioner [now, respondent] are likewise **CANCELLED** and **SET ASIDE**.

SO ORDERED.”

Petitioner then moved for reconsideration of the Assailed Decision but was denied anew in the Assailed Resolution, the dispositive portion of which, reads as follows:¹⁸

“**WHEREFORE**, premises considered, respondent's [now, petitioner] Motion for Reconsideration (Re: Decision promulgated on 2 December 2021) is **DENIED** for lack of merit.

SO ORDERED.”

Thus, on June 8, 2022, petitioner filed the instant Petition for Review. On July 6, 2022, respondent was directed to file its comment on the said petition.¹⁹

Respondent posted a Motion for Extension of Time to File Comment²⁰ on July 20, 2022. On August 4, 2022, respondent filed its *Comments*.²¹ On September 28, 2022, the Court granted respondent's Motion for Extension of Time to File Comment and directed respondent to submit seven (7) more copies of said comment within five (5) days from receipt.²² Respondent posted its compliance on October 26, 2022.

The case was submitted for decision on January 18, 2023.²³

The Issue

Whether or not the Court in Division erred in cancelling petitioner's assessment against the alleged respondent's deficiency income tax for taxable year 2014.

¹⁸ *Rollo, Resolution* dated May 17, 2022, p. 62.

¹⁹ *Id.*, *Resolution* dated July 6, 2022, pp. 64-65.

²⁰ *Id.* at pp. 66-67.

²¹ *Id.* at pp. 70-78.

²² *Id.*, *Resolution* dated September 28, 2022, pp. 83-84.

²³ *Id.*, *Resolution* dated January 18, 2023, pp. 91-92. *on*

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Arguments of Petitioner

Petitioner argues that this Court has no jurisdiction on respondent's original petition because the assessment against the latter has already become final, executory and demandable, and that respondent failed to observe the jurisdictional period to appeal as provided under the law.

Petitioner insists that the Court in Division erred in ruling that respondent's transfer from RDO No. 36 to RDO No. 25A was valid and that it failed to prove the subject PAN and FLD/FAN were received by respondent.

Petitioner further argues that the Court in Division erred in ruling that the compromise penalty was not validly imposed.

Arguments of Respondent

Respondent counter-argues that the Court in Division did not err in its ruling declaring the assessments as invalid.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition was timely filed. Sections 1 and 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that:


SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

xxx

xxx

xxx

SEC. 3. *Who may appeal; period to file petition.*- (a) xxx
xxx xxx

(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full 

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amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated May 17, 2022 and petitioner received a copy of said resolution on May 24, 2022.²⁴

Applying the above-cited provision, petitioner had fifteen (15) days from May 24, 2022 or until June 8, 2022 to file its petition. Thus, the filing of the instant Petition for Review on June 8, 2022 was on time.

Now, on the substantive issues raised by petitioner, we find no merit in the instant appeal.

This Court has jurisdiction on "other matters" such as the question on the validity of any notice issued by the BIR.

Petitioner faulted the Court in Division for acquiring jurisdiction on respondent's petition considering that the subject assessment has allegedly become final, executory and demandable, and that the reckoning period should have been counted on the date of respondent's receipt of the PCL.

Based on the records of the case, particularly in respondent's Petition for Review in the Court in Division, the ground of such petition was based on its receipt of the FNBS issued by petitioner on November 14, 2018.

Section 7(a)(1) of Republic Act (RA) No. 1125,²⁵ as amended by RA No. 9282,²⁶ which confers upon this Court the

²⁴ Docket, CTA Case No. 9992, Notice of Resolution dated May 17, 2022, p. 411.

²⁵ AN ACT CREATING THE COURT OF TAX APPEALS.

²⁶ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. *om*

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jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also on “other matters” arising under the 1997 NIRC, as amended. Said provision reads, to wit:

“SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**
(Emphases and underscoring added)

Based on the foregoing, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.²⁷

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*,²⁸ such CTA jurisdiction on “other matters” was reiterated by the Supreme Court, to wit:

“Contrary however to the CIR's argument, Section 7(a)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC:

SEC. 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation

²⁷ *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

²⁸ G.R. No. 255473. February 13, 2023. *om*

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thereto, or other matters arising under the National Internal Revenue [Code] or other laws administered by the Bureau of Internal Revenue[.]

As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple....**” (*Emphasis supplied*)

Although the subject of the aforesaid case pertains to a Warrant of Distraint and/or Levy (WDL), an FNBS is also a mode of collection by petitioner of the alleged deficiency tax assessments against respondent prior to the seizure of the latter’s real or personal property.

Thus, the FNBS is covered under the phrase “other matters” under Section 7(a)(1) of RA No. 1125, as amended. The Court in Division properly acquired jurisdiction over the instant case.

Factual findings of the CTA Court in Division cannot be disturbed sans any proof of abuse of discretion

Petitioner faulted the Court in Division in ruling that respondent’s transfer from RDO No. 36 to RDO No. 25A was valid and that it failed to prove that the subject PAN and FLD/FAN were received by respondent.

It should be noted that said rulings are factual findings by the Court in Division during the course of the trial. Hence, in the absence of any factual allegation and empirical proof that said Court has committed grave abuse of discretion, the Court *en banc* cannot disturb such factual findings as held in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation)*,²⁹ to wit:

“With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse

²⁹ G.R. No. 188016, January 14, 2015. *com*

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of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties....”

The reason for such is that the CTA Court in Division, as a trial court, was in the best position to observe and appreciate the evidence presented to it during the trial of the case as held in *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Syquia-Mendoza, et al.*,³⁰ to wit:

“Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.” (*Emphasis supplied*)

In the instant case, petitioner merely alleged that the Court in Division erred in making said rulings without mentioning and providing proof that the same were attended either by grave abuse of discretion, arbitrariness, or capriciousness.

Thus, this Court will not disturb such factual findings.

Issue on prescription raised for the first time in motion for reconsideration or on appeal is not allowed.

Petitioner also argues that since there was a substantial underdeclaration of about 92% of the correct income committed by respondent, hence, fraud was committed. Thus, the ten (10)-year prescriptive period under Section 222 of the 1997 NIRC, as amended, was applicable and not the three (3) year prescriptive period under Section 203 of the same law.

In the Assailed Resolution, the Court in Division cited that petitioner failed to adduce any evidence to prove fraud or intentional falsity or that petitioner filed the return with the

³⁰ G.R. No. 209132, June 05, 2017. *on*

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intent to evade the taxes due. Again, such is a factual finding of the Court in Division which this Court cannot disturb in the absence of any competent evidence of arbitrariness on its part.³¹

Moreover, the Court in Division stated that the issue on prescription was only raised in the motion for reconsideration subject of the Assailed Resolution nor such issue was included in the PAN or FLD/FAN.³²

In *Development Bank of the Philippines v. West Negros College, Inc.*,³³ the Supreme Court ruled that an issue raised for the first time in a motion for reconsideration or on appeal is not allowed, to wit:

“... Moreover, it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors.”

Thus, this Court shall not discuss any further such issue.

Compromise Penalty requires the consent from both parties.

As to imposition of compromise penalty, such was not proper. In the recent case of *San Miguel Corporation v. Commissioner of Internal Revenue*,³⁴ the Supreme Court ruled that the imposition of compromise penalty requires mutuality between the parties, to wit:

“However, the **compromise penalty should not be imposed** on SMC, **as compromise is, by its nature, mutual in essence**. The records do not show that SMC agreed to the compromise penalty. This is bolstered by the fact that SMC disputed the assessment made by the CIR. It must also be noted that compromise penalty are amounts suggested in

³¹ *Rollo*, Resolution dated May 17, 2022, p. 61.

³² *Id.*

³³ G.R. No. 152359, May 21, 2004.

³⁴ G.R. Nos. 257697 & 259446, April 12, 2023. *cm*

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the settlement of criminal tax liability. Since SMC's case does not involve criminal tax liabilities, the compromise penalty should not have been imposed and collected.”
(*Emphasis supplied*)


In the Assailed Decision, the Court categorically states that there was no indication that respondent consented to the subject compromise penalty. The fact that respondent questioned the assessment itself bolstered the absence of the required consent from it. Thus, there was no legal basis for such imposition.


WHEREFORE, premises considered, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the Assailed *Decision* dated December 2, 2021 and *Resolution* dated May 17, 2022 are **AFFIRMED**.


SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

Lanee S. Cui-David
LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

Henry S. Angeles
HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Roman G. Del Rosario
ROMAN G. DEL ROSARIO
Presiding Justice

RM