SECOND DIVISION

[G.R. No. 240729, August 24, 2020]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. T SHUTTLE SERVICES, INC., RESPONDENT.

R E S O L U T I O N

INTING, J.:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR) against T Shuttle Services, Inc. (respondent) assailing the Decision[2] dated April 3, 2018 and the Resolution[3] dated July 16, 2018 issued by the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1565 (CTA Case No. 8650).

The relevant facts, as gathered by the CTA *En Banc*, are as follows:

On July 15, 2009, the CIR issued to respondent a Letter of Notice (LN) No. 057-RLF-07-00-00047 informing it of the discrepancy found after comparing its tax returns for Calendar Year (CY) 2007 with the Reconciliation of Listings for Enforcement and Third-Party Matching under the Tax Reconciliation System. The LN was received and signed by a certain Malou Bohol on July 24, 2009.[4]

Subsequently, the Bureau of Internal Revenue (BIR), through LN Task Force Head Salina B. Marinduque, issued a follow-up letter dated August 24, 2009. The letter was received and signed by a certain Amado Ramos.[5]

Due to the inaction of respondent, the CIR issued to it, on January 12, 2010, the following: (1) Letter of Authority (LOA) No. 200800044533 for the examination of its book of accounts; and other accounting records and (2) a Notice of Informal Conference (NIC).[6]

On March 29, 2010, the CIR issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies that found respondent liable for deficiency income tax (IT) and value-added tax (VAT) in the total amount of P6,485,579.49.[7]

On July 20, 2010, the CIR issued a Final Assessment Notice (FAN), assessing respondent with deficiency VAT in the amount of P3,720,488.73 and deficiency IT in the amount of P5,305,486.50.[8]

On November 28, 2012, the Revenue District Officer (RDO) issued a Preliminary Collection Letter requesting respondent to pay the assessed tax liability within 10 days from notice.[9]

On January 23, 2013, the RDO issued a Final Notice Before Seizure (FNBS) giving respondent the last opportunity to settle its tax liability within 10 days from notice.[10]

On March 20, 2013, respondent sent a letter to the RDO and the collection officers stating that: (1) it is not aware of any pending liability for CY 2007; (2) that Mr. B. Benitez, who signed and received the preliminary notices, was a disgruntled rank-and-file employee not authorized to receive the notices; and (3) Mr. B. Benitez did not forward the notices to it. Respondent also requested a grace period of one month to review its documents.[11]

In a letter dated April 2, 2013, the RDO denied the requested one-month grace period.[12]

On April 19, 2013, respondent protested the FNBS. It claimed that it is not liable for any deficiency IT for CY 2007; that being a common carrier, it is exempt from the payment of VAT; that the service of the NIC was invalid; and that it did not receive the PAN and FAN prior to the issuance of the FNBS.[13]

On April 23, 2013, respondent was constructively served with a Warrant of Distraint and/or Levy (WDL) No. 057-03-13-074-R.[14]

Aggrieved, on May 2, 2013, respondent filed a Petition for Review (With Prayer for Preliminary Injunction and Issuance of a Temporary Restraining Order) with the CTA in Division.[15]

In the Answer dated August 22, 2013, the CIR prayed for the denial of the petition for review arguing that: (1) no error or illegality can be ascribed to his assessment for deficiency tax liability as due process was observed; (2) respondent failed to interpose a timely protest against the FAN and to submit within the prescribed period of 60 days supporting documents to refute the findings of the revenue examiners; (3) respondent is liable for deficiency IT and deficiency VAT; and (4) the presumption of the propriety and exactness of tax assessments is in his favor.[16]

Ruling of the CTA sitting in Division (*CTA Division*)

In the Decision dated August 30, 2016, the CTA Division granted respondent's petition for review. Accordingly, it cancelled and set aside the following: (1) the FAN dated July 20, 2010 and the attached Assessment Notices No. F-057-LNTF-07-IT-002 and F-057-LNTF-07-VT-002, respectively assessing respondent for deficiency IT of P5,305,486.50 and deficiency VAT of P3,720,488.73, or a total of P9,025,975.23, for CY 2007; and (2) WDL No. 057-03-13-074-12 served on April 23, 2013.

The CTA Division found that respondent was not accorded due process in the issuance of the PAN and the FAN as there was failure to prove that the notices were properly and duly served upon and received by respondent. Hence, it declared void the assessments made against respondent for deficiency IT and deficiency VAT.[17]

In the Resolution dated November 16, 2016, the CTA Division denied the CIR's motion for reconsideration. Hence, the CIR filed a petition for review with the CTA *En Banc*.

Ruling of the CTA En Banc

In the assailed Decision[18] dated April 3, 2018, the CTA *En Banc* denied the petition for review for lack of merit. Thus, it affirmed the ruling of the CTA Division that the CIR failed to prove that the PAN and the FAN were properly and duly served upon

and received by respondent. Consequently, it declared void the deficiency IT and VAT for CY 2007 assessed against respondent for failure to accord respondent due process in their issuance.[19]

Furthermore, even assuming that the PAN and the FAN were properly and duly served upon and received by respondent, the CTA *En Banc* ruled that the deficiency IT and VAT assessments against respondent for CY 2007 are still void for failure to demand payment of the taxes due within a specific period. It observed that the FAN and the assessment notices attached to it failed to prescribe a definite period for respondent to pay the alleged deficiency taxes.[20]

The CIR filed motion for reconsideration, but the CTA *En Banc* denied it in the Resolution[21] dated July 16, 2018.

Hence, the present petition raising the following grounds:

> WHILE MAINTAINING THAT THE CTA HAS NO JURISDICTION OVER THE ORIGINAL PETITION SINCE THE DEFICIENCY TAX ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE, THE CTA ERRED IN DECLARING THE ASSESSMENTS VOID FOR THE ALLEGED FAILURE ON THE PART OF PETITIONER TO PROVE SERVICE THEREOF TO RESPONDENT.
>
> THE CTA *EN BANC* ERRED IN RULING THAT THE FINAL ASSESSMENT NOTICE ISSUED AGAINST RESPONDENT IS VOID FOR ALLEGEDLY NOT CONTAINING A DEFINITE DUE DATE FOR PAYMENT OF THE TAX LIABILITIES.[22]

The Court's Ruling

The petition lacks merit.

At the outset, it bears stressing that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion."[23] Further, a petition under Rule 45 of the Rules of Court should raise only questions of law which must be distinctly set forth.[24] A question is one of law when the appellate court can determine the issue raised without reviewing or evaluating the evidence; otherwise, it is a question of fact.[25]

Factual questions are not the proper subject of an appeal by *certiorari*. It is not for the Court to once again analyze or weigh evidence that has already been considered in the lower courts.[26]

The question of whether the CIR was able to sufficiently prove that the PAN and the FAN were properly and duly served upon and received by respondent is, undeniably, a question of fact. In the case, the CTA *En Banc* ruled in the negative; hence, it sustained the CTA Division's finding that respondent was not accorded due process and declared void the assessments made against respondent for deficiency IT and VAT for CY 2007.

The Court recognizes that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or

abuse on the part of the tax court.[27] There is no such gross error or abuse in this case.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the assessment to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Section 228 pertinently provides:

> SEC. 228. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> x x x x
>
> *The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.*
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> x x x x
> (Emphasis supplied)

To highlight the due process requirement in Section 228 of the NIRC, Section 3 of Revenue Regulations (RR) 12-99[28] dated September 6, 1999 provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Notice for informal conference*. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the tax payer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his

duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based x x x. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

x x x x

3.1.4 *Formal Letter of Demand and Assessment Notice*. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

x x x x

As can be gleaned from the above provisions, service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[29]

In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.

As ruled by the CTA *En Banc*, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia