

FIRST DIVISION

[G.R. NO. 159694, January 27, 2006]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
AZUCENA T. REYES, RESPONDENT.**

[G.R. NO. 163581]

**AZUCENA T. REYES, PETITIONER, VS. COMMISSIONER OF
INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

PANGANIBAN, CJ.:

Under the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. Being invalid, the assessment cannot in turn be used as a basis for the perfection of a tax compromise.

The Case

Before us are two consolidated^[1] Petitions for Review^[2] filed under Rule 45 of the Rules of Court, assailing the August 8, 2003 Decision^[3] of the Court of Appeals (CA) in CA-GR SP No. 71392. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, the petition is **GRANTED**. The assailed decision of the Court of Tax Appeals is **ANNULLED** and **SET ASIDE** without prejudice to the action of the National Evaluation Board on the proposed compromise settlement of the Maria C. Tancinco estate's tax liability."^[4]

The Facts

The CA narrated the facts as follows:

"On July 8, 1993, Maria C. Tancinco (or "decedent") died, leaving a 1,292 square-meter residential lot and an old house thereon (or "subject property") located at 4931 Pasay Road, Dasmariñas Village, Makati City.

"On the basis of a sworn information-for-reward filed on February 17, 1997 by a certain Raymond Abad (or "Abad"), Revenue District Office No. 50 (South Makati) conducted an investigation on the decedent's estate (or "estate"). Subsequently, it issued a Return Verification Order. But without the required preliminary findings being submitted, it issued Letter of Authority No. 132963 for the regular investigation of the estate

tax case. Azucena T. Reyes (or "[Reyes]"), one of the decedent's heirs, received the Letter of Authority on March 14, 1997.

"On February 12, 1998, the Chief, Assessment Division, Bureau of Internal Revenue (or "BIR"), issued a preliminary assessment notice against the estate in the amount of P14,580,618.67. On May 10, 1998, the heirs of the decedent (or "heirs") received a final estate tax assessment notice and a demand letter, both dated April 22, 1998, for the amount of P14,912,205.47, inclusive of surcharge and interest.

"On June 1, 1998, a certain Felix M. Sumbillo (or "Sumbillo") protested the assessment [o]n behalf of the heirs on the ground that the subject property had already been sold by the decedent sometime in 1990.

"On November 12, 1998, the Commissioner of Internal Revenue (or "[CIR]") issued a preliminary collection letter to [Reyes], followed by a Final Notice Before Seizure dated December 4, 1998.

"On January 5, 1999, a Warrant of Dstraint and/or Levy was served upon the estate, followed on February 11, 1999 by Notices of Levy on Real Property and Tax Lien against it.

"On March 2, 1999, [Reyes] protested the notice of levy. However, on March 11, 1999, the heirs proposed a compromise settlement of P1,000,000.00.

"In a letter to [the CIR] dated January 27, 2000, [Reyes] proposed to pay 50% of the basic tax due, citing the heirs' inability to pay the tax assessment. On March 20, 2000, [the CIR] rejected [Reyes's] offer, pointing out that since the estate tax is a charge on the estate and not on the heirs, the latter's financial incapacity is immaterial as, in fact, the gross value of the estate amounting to P32,420,360.00 is more than sufficient to settle the tax liability. Thus, [the CIR] demanded payment of the amount of P18,034,382.13 on or before April 15, 2000[;] otherwise, the notice of sale of the subject property would be published.

"On April 11, 2000, [Reyes] again wrote to [the CIR], this time proposing to pay 100% of the basic tax due in the amount of P5,313,891.00. She reiterated the proposal in a letter dated May 18, 2000.

"As the estate failed to pay its tax liability within the April 15, 2000 deadline, the Chief, Collection Enforcement Division, BIR, notified [Reyes] on June 6, 2000 that the subject property would be sold at public auction on August 8, 2000.

"On June 13, 2000, [Reyes] filed a protest with the BIR Appellate Division. Assailing the scheduled auction sale, she asserted that x x x the assessment, letter of demand[,], and the whole tax proceedings against the estate are void ab initio. She offered to file the corresponding estate tax return and pay the correct amount of tax without surcharge [or] interest.

"Without acting on [Reyes's] protest and offer, [the CIR] instructed the Collection Enforcement Division to proceed with the August 8, 2000 auction sale. Consequently, on June 28, 2000, [Reyes] filed a [P]etition for [R]eview with the Court of Tax Appeals (or "CTA"), docketed as CTA Case No. 6124.

"On July 17, 2000, [Reyes] filed a Motion for the Issuance of a Writ of Preliminary Injunction or Status Quo Order, which was granted by the CTA on July 26, 2000. Upon [Reyes's] filing of a surety bond in the amount of P27,000,000.00, the CTA issued a [R]esolution dated August 16, 2000 ordering [the CIR] to desist and refrain from proceeding with the auction sale of the subject property or from issuing a [W]arrant of [D]istrait or [G]arnishment of [B]ank [A]ccount[,], pending determination of the case and/or unless a contrary order is issued.

"[The CIR] filed a [M]otion to [D]ismiss the petition on the grounds (i) that the CTA no longer has jurisdiction over the case[,], because the assessment against the estate is already final and executory; and (ii) that the petition was filed out of time. In a [R]esolution dated November 23, 2000, the CTA denied [the CIR's] motion.

"During the pendency of the [P]etition for [R]eview with the CTA, however, the BIR issued Revenue Regulation (or "RR") No. 6-2000 and Revenue Memorandum Order (or "RMO") No. 42-2000 offering certain taxpayers with delinquent accounts and disputed assessments an opportunity to compromise their tax liability.

"On November 25, 2000, [Reyes] filed an application with the BIR for the compromise settlement (or "compromise") of the assessment against the estate pursuant to Sec. 204(A) of the Tax Code, as implemented by RR No. 6-2000 and RMO No. 42-2000.

"On December 26, 2000, [Reyes] filed an Ex-Parte Motion for Postponement of the hearing before the CTA scheduled on January 9, 2001, citing her pending application for compromise with the BIR. The motion was granted and the hearing was reset to February 6, 2001.

"On January 29, 2001, [Reyes] moved for postponement of the hearing set on February 6, 2001, this time on the ground that she had already paid the compromise amount of P1,062,778.20 but was still awaiting approval of the National Evaluation Board (or "NEB"). The CTA granted the motion and reset the hearing to February 27, 2001.

"On February 19, 2001, [Reyes] filed a Motion to Declare Application for the Settlement of Disputed Assessment as a Perfected Compromise. In said motion, she alleged that [the CIR] had not yet signed the compromise[,], because of procedural red tape requiring the initials of four Deputy Commissioners on relevant documents before the compromise is signed by the [CIR]. [Reyes] posited that the absence of the requisite initials and signature[s] on said documents does not vitiate the perfected compromise.

"Commenting on the motion, [the CIR] countered that[,] without the approval of the NEB, [Reyes's] application for compromise with the BIR cannot be considered a perfected or consummated compromise.

"On March 9, 2001, the CTA denied [Reyes's] motion, prompting her to file a Motion for Reconsideration *Ad Cautelam*. In a [R]esolution dated April 10, 2001, the CTA denied the [M]otion for [R]econsideration with the suggestion that[,] for an orderly presentation of her case and to prevent piecemeal resolutions of different issues, [Reyes] should file a [S]upplemental [P]etition for [R]eview[,] setting forth the new issue of whether there was already a perfected compromise.

"On May 2, 2001, [Reyes] filed a Supplemental Petition for Review with the CTA, followed on June 4, 2001 by its Amplificatory Arguments (for the Supplemental Petition for Review), raising the following issues:

"1. Whether or not an offer to compromise by the [CIR], with the acquiescence by the Secretary of Finance, of a tax liability pending in court, that was accepted and paid by the taxpayer, is a perfected and consummated compromise.

"2. Whether this compromise is covered by the provisions of Section 204 of the Tax Code (CTRP) that requires approval by the BIR [NEB]."

"Answering the Supplemental Petition, [the CIR] averred that an application for compromise of a tax liability under RR No. 6-2000 and RMO No. 42-2000 requires the evaluation and approval of either the NEB or the Regional Evaluation Board (or "REB"), as the case may be.

"On June 14, 2001, [Reyes] filed a Motion for Judgment on the Pleadings; the motion was granted on July 11, 2001. After submission of memoranda, the case was submitted for [D]ecision.

"On June 19, 2002, the CTA rendered a [D]ecision, the decretal portion of which pertinently reads:

"WHEREFORE, in view of all the foregoing, the instant [P]etition for [R]eview is hereby DENIED. Accordingly, [Reyes] is hereby ORDERED to PAY deficiency estate tax in the amount of Nineteen Million Five Hundred Twenty Four Thousand Nine Hundred Nine and 78/100 (P19,524,909.78), computed as follows:

x x x x x x x x

"[Reyes] is likewise ORDERED to PAY 20% delinquency interest on deficiency estate tax due of P17,934,382.13 from January 11, 2001 until full payment thereof pursuant to Section 249(c) of the Tax Code, as amended."

"In arriving at its decision, the CTA ratiocinated that there can only be a perfected and consummated compromise of the estate's tax liability[,] if

the NEB has approved [Reyes's] application for compromise in accordance with RR No. 6-2000, as implemented by RMO No. 42-2000.

"Anent the validity of the assessment notice and letter of demand against the estate, the CTA stated that "at the time the questioned assessment notice and letter of demand were issued, the heirs knew very well the law and the facts on which the same were based." It also observed that the petition was not filed within the 30-day reglementary period provided under Sec. 11 of Rep. Act No. 1125 and Sec. 228 of the Tax Code."^[5]

Ruling of the Court of Appeals

In partly granting the Petition, the CA said that Section 228 of the Tax Code and RR 12-99 were mandatory and unequivocal in their requirement. The assessment notice and the demand letter should have stated the facts and the law on which they were based; otherwise, they were deemed void.^[6] The appellate court held that while administrative agencies, like the BIR, were not bound by procedural requirements, they were still required by law and equity to observe substantive due process. The reason behind this requirement, said the CA, was to ensure that taxpayers would be duly apprised of -- and could effectively protest -- the basis of tax assessments against them.^[7] Since the assessment and the demand were void, the proceedings emanating from them were likewise void, and any order emanating from them could never attain finality.

The appellate court added, however, that it was premature to declare as perfected and consummated the compromise of the estate's tax liability. It explained that, where the basic tax assessed exceeded P1 million, or where the settlement offer was less than the prescribed minimum rates, the National Evaluation Board's (NEB) prior evaluation and approval were the *conditio sine qua non* to the perfection and consummation of any compromise.^[8] Besides, the CA pointed out, Section 204(A) of the Tax Code applied to all compromises, whether government-initiated or not.^[9] Where the law did not distinguish, courts too should not distinguish.

Hence, this Petition.^[10]

The Issues

In GR No. 159694, petitioner raises the following issues for the Court's consideration:

"I.

Whether petitioner's assessment against the estate is valid.

"II.

Whether respondent can validly argue that she, as well as the other heirs, was not aware of the facts and the law on which the assessment in question is based, after she had opted to propose several compromises on the estate tax due, and even prematurely acting on such proposal by paying 20% of the basic estate tax due."^[11]