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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **07 October 2019** which reads as follows:

"G.R. No. 248151 – PEOPLE OF THE PHILIPPINES v. BIENVENIDO S. DIMSON and GILBERT P. DIMSON (DIMSON MANILA, INC.)

X-----X

The Court resolves to **DENY** the petition for review on certiorari for failure to sufficiently show that the Court of Tax Appeals (CTA) *En Banc* committed reversible error when it ruled that respondent cannot be held civilly liable on the basis of void tax assessments issued by petitioner, as to warrant the Court's exercise of its discretionary appellate jurisdiction.

An invalid tax assessment issued without the requisite notice to the taxpayer concerned cannot give rise to a valid tax liability or corresponding civil liability on the part of the taxpayer and/or the officers acting on its behalf.

DMI's officers were charged with violation of Section 255¹ of the Tax Reform Act of 1997. Section 228² of the same Act, however, provides that before a taxpayer may be held criminally liable for violation of the law, such taxpayer must first be notified of such deficiency or delinquent tax. This is to give such taxpayer the chance to explain the deficiency. This is part of

¹ **Section 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

² **Section 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.** x x x

x x x x x 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. (Emphasis supplied)

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due process as the Court held in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*³ viz:

From the provision quoted above, it is clear that the **sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.** Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void. (Emphasis supplied)

In view of the absence of proof that the PAN, FAN, and FLD were actually sent to and received by DMI, then such tax assessments themselves were invalid. Consequently, DMI's liability to pay the alleged tax deficiency based on such void tax assessments did not arise.

At any rate, if there is truly a deficiency in DMI's taxes for Taxable Year 2002, for purposes of exacting payment from DMI, the BIR should reckon with the law on prescription and the prescribed procedure under the Tax Reform Act of 1997.

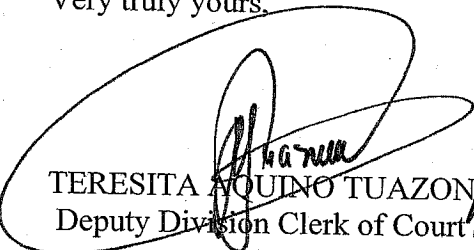
A final point. It is true that taxes are the lifeblood of the government. However, in spite of all its plenitude, the power to tax has its limits. Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate that the law has not been observed.⁴

³ 652 Phil. 172, 186-187 (2010).

⁴ *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, 748 Phil. 760, 772 (2014), citing *Commissioner of Internal Revenue v. Algue, Inc.*, 241 Phil. 829, 830 and 836 (1988).

SO ORDERED.”

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
03 DEC 2019

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