REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MAXICARE HEALTHCARE CORPORATION, Petitioner,	CTA Case No. 9246
	Members:
-versus-	DEL ROSARIO, *P.J., Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 2 1 2020 8:47am

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RESOLUTION

***Fabon-Victorino, J.*:**

On January 16, 2020, the Court promulgated a Decision disposing this case as follows:

> **WHEREFORE**, the instant *Petition for Review* filed by petitioner Maxicare Healthcare Corporation is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated December 9, 2015 issued against petitioner is **WITHDRAWN** and **SET ASIDE**. Furthermore, the Formal Letter of Demand and Final Assessment Notice, both dated October 8, 2015, assessing petitioner for deficiency Value-Added Tax and Compromise Penalty for calendar year 2012, are likewise **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**.

Aggrieved, respondent filed the instant *Motion for Reconsideration (Re: Decision promulgated 16 January 2020)* claiming that the Court erred when it ruled that he violated petitioner's right to administrative due process.

According to respondent, petitioner's protest to the Formal Letter of Demand (FLD) was a mere rehash of its protest against the Preliminary Assessment Notice (PAN). Moreover, the said protest to the FLD requested for a reconsideration and not for reinvestigation as no new arguments were raised nor any documents submitted in support thereof.

Respondent further insists that while petitioner's letter was captioned "Request for Reinvestigation," it was actually a motion for reconsideration as suggested in the body of the letter. Respondent theorizes that if petitioner really intended to present additional documents, it should have been done during the early part of the investigation, but nay. Petitioner's non-submission of further documents even after the issuance of the FLD, indicated that it only wanted a reconsideration of his findings and not a reinvestigation relative to the assessment issued against it.

The essence of due process, according to respondent, is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling. Respondent claims that he thoroughly considered petitioner's arguments and contentions which led to the issuance of the FLD and Final Decision on Disputed Assessment (FDDA). Having complied with the procedural requirements in the conduct of the audit and investigation, petitioner's claim that it was deprived of due process is baseless.

Finally, respondent posits that petitioner is liable to pay the assessed deficiency taxes in the absence of any proof justifying conclusion to the contrary.

In its *Comment/Opposition*, petitioner submits that respondent's *Motion for Reconsideration* has no merit clued on the following grounds:

The Honorable Court correctly ruled that the CIR prematurely issued the Final Demand on Disputed Assessment (FDDA), in violation of the due process rights of Maxicare, thereby rendering the FDDA null and void.

I. The CIR's belated assertion that Maxicare's tax protest was a request for reconsideration and not a request for reinvestigation is a mere afterthought, not worthy of credence. Moreover, the CIR is deemed to have waived the said defense.

II. As correctly found by the Honorable Court, Maxicare's tax protest was clearly in the nature of a request for reinvestigation.

III. As correctly ruled by the Honorable Court, the CIR prematurely issued the FDDA in violation of the due process rights of Maxicare, thereby rendering the FDDA null and void.

IV. Contrary to the CIR's assertion, Maxicare submitted the supporting documents within the sixty-day period.

V. The presumption in favor of the correctness of tax assessment cannot be applied due to the glaring disregard by the CIR of the established procedure laid down by the Tax Code and the Supreme Court.

After going over the allegations in the *Motion for Reconsideration* filed by respondent together with the counter argumentations raised by petitioner, the Court finds no cogent reason to warrant a reconsideration of the assailed Decision of January 16, 2020.

Pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, a tax assessment issued by the Bureau of Internal Revenue (BIR) can be administratively protested by the taxpayer by filing a request for reconsideration or reinvestigation, within thirty (30) days from receipt thereof. And in case of request for reinvestigation, the taxpayer is given a period of sixty (60) days from the filing of such request for reinvestigation to submit all relevant supporting documents.[1]

It is clear from the record that on November 9, 2015, or within the 30-day period from receipt of the FAN/FLD, petitioner filed a letter protest dated November 6, 2015 **explicitly** requesting for a reinvestigation of its tax case. The relevant portion of the said letter protest reads:

> Considering the clarifications made, **we request for reinvestigation of the BIR assessment of deficiency VAT for 2012**, and the cancellation and/or withdrawal of the FAN and the FLD for being without basis in fact and in law. **We shall submit within sixty (60) days from the date of filing hereof the pertinent supporting documents** and additional explanations on the foregoing items in the assessment. *(Emphases and underscoring ours)*

Hence, petitioner had 60 days from the filing of such letter protest or until January 8, 2016 to submit relevant supporting documents. Respondent however in haste issued the assailed FDDA on December 9, 2015 without allowing the 60-day period to lapse thereby preventing petitioner from submitting relevant supporting documents for purposes of reinvestigation of its tax case in clear violation of its right to due process.

As declared by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*,[2] the BIR is mandated to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. Failure of the BIR to observe due process shall

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[1] Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013.
[2] G.R. Nos. 201398-99, and 201418-19, October 3, 2018.

render the deficiency tax assessment void, and of no force and effect.

WHEREFORE, respondent's *Motion for Reconsideration (RE: Decision promulgated 16 January 2020)* is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice