REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

SCRIPT2010, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9415

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

FEB 17 2020
1:30 p.m.

x - x

AMENDED DECISION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. respondent's **Motion for Partial Reconsideration (Decision dated 04 October 2019)**, filed on October 24, 2019, with petitioner's **Comment/Opposition (Re: Motion for Partial Reconsideration dated October 24, 2019)**, filed on December 6, 2019; and,

2. petitioner's **Motion for Partial Reconsideration (Re: Decision dated October 4 2019)**, filed through registered mail on October 24, 2019 and received by the Court on October 30, 2019, without respondent's comment as per Records Verification dated December 11, 2019.

On October 4, 2019, a Decision was promulgated by this Court affirming with modifications respondent's income tax, value-added tax (VAT), and expanded withholding tax (EWT) assessments against petitioner for calendar year 2011, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for the taxable year ended December 31, 2011 covering deficiency income tax, VAT, and EWT are **AFFIRMED WITH MODIFICATIONS.** Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **SIXTY-TWO MILLION EIGHT HUNDRED SEVENTY-NINE THOUSAND PESOS AND EIGHTY-SIX CENTAVOS (₱62,879,000.86)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	Income Tax	**VAT**	**EWT**	**Total**
Basic tax	₱ 19,395,976.54	₱ 278,437.00	₱ 1,347,993.76	₱ 21,022,407.30
25% Surcharge	4,848,994.13	69,609.25	336,998.44	5,255,601.82
20% Deficiency interest				
from 4/16/2012 to 8/5/2016 *(₱19,395,976.54 x 20% x 1,572/365days)*	16,707,109.66			16,707,109.66
from 1/26/2012 to 8/5/2016 *(₱278,437.00 x 20% x 1,654/365days)*		252,347.84		52,347.84
from 1/11/2012 to 8/5/2016) *(₱1,347,993.76 x 20% x 1,668/365days)*			1,232,029.37	1,232,029.37
Total Amount due as of August 5, 2016	**₱40,952,080.33**	**₱600,394.09**	**₱2,917,021.57**	**₱44,469,495.99**
20% Deficiency interest from 8/6/2016 to 12/31/2017)				
(₱19,395,976.54 x 20% x 513/365days)	5,452,129.30			5,452,129.30
(₱278,437.00 x 20% x 513/365days)		78,267.50		78,267.50
(₱1,347,993.76 x 20% x 513/365days)			378,915.51	378,915.51
20% Delinquency interest from 8/6/2016 to 12/31/2017				
(₱40,952,080.33 x 20% x 513/365days)	11,511,461.48			11,511,461.48
(₱600,394.09 x 20% x 513/365days)		168,768.31		168,768.31
(₱2,917,021.56 x 20% x 513/365days)			819,962.77	819,962.77
Total amount due as of December 31, 2017	**₱57,915,671.11**	**₱847,429.90**	**₱4,115,899.85**	**₱62,879,000.86**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of **₱44,469,495.99** as of July 31, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED. *92*

Undaunted, both parties move for the partial reconsideration of the above Decision.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent moves that the Decision dated October 4, 2019 be reversed and set aside based on the following grounds, *viz.*:

I. The Court erred in ruling that respondent's right to assess petitioner of deficiency VAT for the first, second and third quarters of calendar year (CY) 2011 and deficiency EWT for the months of January to November of CY 2011 had already prescribed.

II. The Court erred in cancelling the assessment on the unaccounted expenses of ₱5,076,727.56 for lack of factual basis.

III. The Court erred in finding that it was improper for the respondent to disallow petitioner's excess tax credit in the amount of ₱754,782.70.

IV. The Court erred in cancelling the deficiency VAT on the unaccounted expenses of ₱5,076,727.56.

On the other hand, in its comment, petitioner opposes the above Motion presenting the following counter-arguments: As to the first ground, respondent's right to issue the deficiency VAT assessment for the 1st to 3rd quarters of CY 2011 and deficiency EWT assessment for January to November 2011 had already prescribed since the law only provides for a period of three (3) years from the filing of the tax return within which respondent may assess a taxpayer; as to the second ground, respondent's income tax assessment for unaccounted expenses lacks legal and factual basis since it was merely based on presumption; with regard to the third ground, respondent's disallowance of excess tax credit was improper for he did not sufficiently informed petitioner in writing of the facts and law on which that portion of the assessment was based; and, lastly, respondent's VAT assessment for unaccounted expenses lacks of legal and factual basis for it was also based on mere presumption. Thus, petitioner prays that respondent's Motion be denied for lack of merit.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner primarily reiterates that respondent's deficiency tax assessments should be cancelled and withdrawn for having been issued in violation of its right to due process of law. Petitioner claims that respondent failed to properly observe the mandatory fifteen (15)-day period from receipt of the Preliminary Assessment Notice (PAN) within which petitioner may reply before issuing a Formal Letter of Demand/Final Assessment Notice (FLD/FAN). Thus, petitioner again asserts that the deficiency tax assessments lacks legal and factual basis.

After due consideration of the arguments presented by the parties, this Court finds no merit in respondent's Motion for Partial Reconsideration. However, after a second hard look of the records of the case, this Court finds merit in petitioner's Motion for Partial Reconsideration.

Truly, taxation is an essential attribute of sovereignty and the lifeblood of every nation are doctrines well-entrenched in our jurisdiction.[1] Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The Bureau of Internal Revenue (BIR)'s power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.[2]

Perforce, in petitioner's Motion, it submits that the deficiency tax assessments are null and void as respondent failed to observe the mandatory requirements laid down under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, as well as applicable jurisprudence.

Petitioner claims that the mandatory fifteen (15)-day period from receipt of the PAN within which to respond thereof was not complied

[1] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* G.R. No. 197945, July 9, 2018.
[2] *Ibid.*

with by respondent, considering that the FLD/FAN was already prepared even before the lapse of the said period.

Accordingly, Section 228 of the NIRC of 1997, as amended, provides that:

> **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 xxx
>
> x x x
>
> The taxpayer 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.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Relative thereto is Section 3.1.2 of RR No. 12-99, as amended, which further provides that, to wit: *[initials]*

> SECTION 3. *Due Process Requirement in the Issuance of Deficiency Tax Assessment.* –
>
> x x x
>
> 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 (see illustration in ANNEX A hereof). **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 (*Emphasis supplied*)

Based on the foregoing provisions, respondent or his duly authorized representative, after the issuance of the PAN, is duty bound to wait for the expiration of fifteen (15) days from the date of receipt thereof. If during the said period, the taxpayer failed to respond to the PAN, it is only then that respondent or his duly authorized representative can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and FAN, which shall be subsequently served to the said taxpayer. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

Again, the PAN is a part of due process. It gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[3] The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of the PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the

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[3] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

CIR to strictly comply with the requirements laid down by law and its own rules is a denial of *[petitioner's]* right to due process.[4]

Moreover, this Court finds the ruling in the CTA case of *Polymer Products (Phil.), Inc. vs. Commissioner of Internal Revenue*[5], as instructive at the matter on hand, *viz.*:

> "Pursuant to the afore-quoted provisions, it is clearly mandated that a taxpayer is given an opportunity to respond to the PAN within fifteen (15) days <u>from receipt</u> thereof. Upon the lapse of the 15-day period, without any response from the taxpayer, the latter shall be considered in default and the BIR shall issue a formal letter of demand and assessment notices.
>
> In the instant case, **records show that petitioner received a copy of the PAN dated December 17, 2010 on <u>January 3, 2011</u>**. Thus, petitioner has fifteen (15) days or until **January 18, 2011** within which to file a reply or protest against the PAN. Prior to the lapse of the fifteen-day period within which petitioner can respond to the PAN, **petitioner received the FLD dated <u>January 7, 2011</u> and Assessment Notices on January 17, 2011.** Notably, **the BIR did not even wait for petitioner to reply to the PAN before issuing the FLD and the Assessment Notices on January 7, 2011**. Stated differently, the assessment notices were issued by the BIR even before the lapse of the fifteen-day period within which petitioner could file a reply or protest to the PAN.
>
> As earlier quoted, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. Indubitably, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No.

[4] *Commissioner of Internal Revenue v. Metro Star Superama*, G.R. No. 185371, December 8, 2010.
[5] CTA Case No. 8299, January 30, 2015.

12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.

x x x

It is worthy to note that, in a number of cases, the Court has declared void any assessment that fails to comply with the due process requirement.

In *A Brown Co., Inc. vs. Commissioner of Internal Revenue*, the CTA ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: (1) **issuance of the final assessment only four (4) days after the issuance of the PAN**; and, (2) **the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt**.

Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue*, the Court ruled that:

> **Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenue Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN**. Even assuming that there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner, through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process.' (Emphasis supplied)

The above rulings were reiterated in *Yumex Philippines Corporation vs. Commissioner of Internal Revenue* wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period granted to the taxpayer to respond to the PAN, *viz.*:

> 'Respondent violated Section 228 of the NIRC of 1997 and the provisions of Revenue Regulations No. 12-99, which give the taxpayer a period of fifteen days within which to reply to the PAN. **In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void**.' (Emphasis supplied)

All told, considering the palpable violation of petitioner's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and the provisions of RR No. 12-99, FLD No. 043A-B319-07 dated January 7, 2011 and the Assessment Notices – being fatally infirm – should be considered void. For that reason, their cancellation and withdrawal is therefore warranted." *(Citations omitted)*

To stress, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto.

In the present case, petitioner received the PAN[6] dated December 22, 2014, on December 29, 2014. It is worthy to note that the fifteen (15)-day period to take action on the PAN starts to run not from respondent's issuance, but from the taxpayer's receipt thereof.[7] Thus, counting fifteen (15) days from the date of receipt of the PAN on December 29, 2014, petitioner had until January 13, 2015 to protest or respond to the PAN. However, on January 8, 2015, respondent prematurely issued the FLD/FAN[8] thereby resulting in the denial of due process on the part of the petitioner. Apparently, respondent failed to properly observe the procedure laid down under Section 228 of the NIRC of 1997, as amended, in relation to RR No. 12-99.

With emphasis, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of

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[6] Exhibit "P-6", docket (vol. II), pp. 813-818; Exhibit "R-7", BIR Records, pp. 413-416.
[7] *Commissioner of Internal Revenue v. Linde Philippines. Inc. (formerly, Consolidated Industrial Gases, Inc.*, CTA EB No. 1515 (CTA Case No. 8724), March 7, 2018.
[8] Exhibit "P-8", docket (vol. II), pp. 819-825; Exhibits "R-9" to "R-12", BIR Records, pp. 426-432.

a deficiency tax assessment. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, sans giving the taxpayer an opportunity to respond thereto.[9]

Accordingly, in wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, respondent clearly violated petitioner's right to due process of law. While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.[10] After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.[11]

In view of the foregoing, this Court need not belabor on the other issues raised by the parties, for it is well-settled that a void assessment bears no valid fruit.[12]

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Decision dated 04 October 2019), is **DENIED** for lack of merit. While, on the other hand, petitioner's Motion for Partial Reconsideration (Re: Decision dated October 4 2019), is hereby **GRANTED**. Accordingly, the dispositive portion of this Court's Decision promulgated on October 4, 2019, is amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments issued by respondent against petitioner for deficiency income tax, VAT and EWT in the aggregate amount of ₱45,447,506.55, inclusive of interest for the taxable year ended December 31, 2011, are **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**"

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[9] *Commissioner of Internal Revenue v. Hemano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Science Institute), Inc.*, CTA EB No. 1151 (CTA Case No. 8095), February 17, 2015.

[10] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 and G.R. Nos. 201418-19, October 3, 2018.

[11] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

[12] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. Nos. 215534 and 215557, April 18, 2016.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

We Concur:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice