REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

FIRST PHILIPPINE INDUSTRIAL CORPORATION,
Respondent.

CTA EB No. 2376
(CTA Case No. 9000)

Present:

DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, JJ.

Promulgated:

MAR 3 0 2023 10:56 am

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION Re: Decision dated 29 September 2022*** filed on October 25, 2022,[1] with ***Comment / Opposition (Re: Motion for Reconsideration dated October 21, 2022)*** filed by respondent on November 14, 2022.[2]

In the said *Motion*, petitioner prays that the Decision dated September 29, 2022 of the Court in *En Banc* be reversed and set aside. The dispositive portion thereof reads:

---

[1] EB Docket, pp. 164 to 178.
[2] EB Docket, pp. 185 to 213.

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated February 24, 2020 and the Resolution dated October 9, 2020 rendered by the Second Division of this Court in CTA Case No. 9000 is **AFFIRMED**.

Consequently, the CIR or any person acting on his behalf is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against respondent FPIC during the pendency of the instant case.

SO ORDERED."

Petitioner's Motion:

In its "***Motion for Reconsideration Re: Decision dated 29 September 2022***", petitioner maintains that the Court in Division erred in granting a relief that was not prayed for by respondent. Petitioner reiterates that since the validity of the Formal Letter of Demand (FLD) was never raised in respondent's pleadings nor defined by the Court in Division in the Pre-Trial Order, the Court in Division should not have considered the same in the resolution of the case.

As regards to the prescription of the subject assessment, petitioner contends that the Court in Division erred in ruling that prescription has set in due to the invalidity of waivers.

Allegedly, the subject *Waivers* need not strictly comply with Revenue Memorandum Order (RMO) No. 20-90 for the following reasons:

1) RMO No. 20-90 is merely an internal issuance that does not grant any vested right on taxpayers, and considering that under the assessment stage, the Bureau of Internal Revenue (BIR) is still in the process of determining the tax liability of the taxpayer;

2) The Waivers could not have contained the specific amount or tax type to be assessed against the respondent since at the time when the Waivers were executed, the BIR has not yet been able to finalize the investigation of respondent's books and is still

unable to determine with certainty how much and what type of taxes will be finally assessed;

3) Respondent is estopped from questioning the validity of the waivers it has executed considering that petitioner has relied on the execution of the same, and respondent has enjoyed the benefits therefrom.

On the issue regarding the invalidity of the FLD and Assessment Notices, petitioner claims that the FLD and Assessment Notices issued by petitioner against respondent are compliant with the basic requisites provided under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. The assessment is allegedly valid as long as it states the fact, the law, the rules, and regulations, or jurisprudence on which it was based. It remains to be valid irrespective of an additional requirement purportedly being prescribed by regulation. The law is clear and provides for that particular requirement for validity and to no other.

Furthermore, petitioner avers that the arguments raised in respondent's protest were read, considered, and incorporated in the assessment notices sent to respondent. Since there was nothing further to consider or address in the FLD, the reiteration of the findings was proper given the circumstances.

Respondent's Comment/Opposition:

In his ***"Comment/Opposition (Re: Motion for Reconsideration dated October 21, 2022)"***, respondent counter-argues that the Court in Division did not err in ruling that the FLD was invalid despite not being prayed for. Petitioner's theory that the validity of the FLD is outside of the scope of issues raised in the proceedings is incorrect. Respondent claims to be consistent in raising the invalidity of the deficiency tax assessment, which necessarily includes the propriety of the issuance of the FLD.

Allegedly, petitioner's claim that its right to due process was violated is baseless because it is settled that the Court of Tax Appeals has authority to rule on issues necessary to achieve an orderly disposition of cases, which in this case includes the validity of the FLD and Assessment Notices.

As regards to petitioner's insistence that RMO No. 20-90 is an internal issuance that does not grant any vested right to any taxpayer, respondent counters that petitioner is admitting that the subject Waivers are not compliant with the said RMO. Citing jurisprudence,[3] respondent stresses that the Supreme Court has already ruled on the mandatory nature of the observance of the guidelines in RMO No. 20-90 and the necessity of faithful compliance therewith, since the rationale for their strict implementation pertains to the importance of the certainty of prescription in the tax system.

Respondent adds that it was established during trial that the subject Waivers were invalid for a number of reasons, such as lack of authority of the signatory to execute the same on behalf of respondent, lack of authority of the revenue officer who accepted the Waivers on behalf of petitioner.

Likewise, respondent contends that the FLD and Assessment Notices are void for failure to state the facts that it was based on, and for failure of the petitioner to address its arguments in its reply to the Preliminary Assessment Notice dated June 23, 2014. For not clearly informing respondent of the facts and the law on which the assessment was based, respondent's due process rights were allegedly violated.

Finally, respondent avers that petitioner's motion for reconsideration did not raise any new arguments and merely reiterated earlier points stated in his Petition for Review.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

After a careful consideration of petitioner's arguments in his Motion for Reconsideration, We find that the same are mere reiterations of matters alleged in its November 19, 2020 Petition for Review filed before the Court *En Banc*, which have already been thoroughly considered, weighed and resolved in our assailed Decision dated September 29, 2022.

---

[3] *Commissioner of Internal Revenue vs. La Flor dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019; *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

Nevertheless, We deem it necessary to reiterate the salient points of our ruling in our assailed Decision.

The CTA has jurisdiction to rule on related issues necessary to achieve an orderly disposition of the case.

Petitioner argues that his basic right to fair play and due process was violated when the Court *En Banc* ruled on the issue of the validity of the FLD since the same was never questioned, nor raised in the parties' respective pleadings nor was included in the Pre-Trial Order.

We disagree.

We reiterate our ruling in our assailed *Decision* dated September 29, 2022, that the Court of Tax Appeals (CTA) is vested with authority to rule upon related issues necessary to achieve an orderly disposition of a case as clearly provided under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> RULE 14
>
> JUDGEMENT, ITS ENTRY AND EXECUTION
>
> Section 1. Rendition of judgment. – xxx xxx xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

This authority has been recognized, and affirmed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[4] where it was held that:

> **"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**

---

[4] G.R. No. 183408, July 12, 2017.

> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> Section 1. Rendition of judgment. – xxx xxx xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda**. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (*Emphasis supplied)*

Clearly from the foregoing jurisprudential pronouncement, the CTA may rule on a related issue which the parties did not raise in their respective pleadings or during trial which is necessary for the orderly disposition of the case. Thus, it was proper for this Court to consider the validity of the FLD, despite not being raised by the parties in their respective pleadings or during trial, in order to achieve an orderly disposition of the case.

The CIR's right to assess and collect the subject deficiency taxes has prescribed due to the invalidity of the subject waivers.

In our assailed Decision dated September 29, 2022, We sustained the ruling of the Court in Division that the subject Waivers of the Defense of Prescription under the Statute of Limitations is not valid for failure to indicate the kind and amount of taxes to be assessed or collected. Such being the case, the same did not effectively extend the prescriptive period under Section 203 of the

NIRC of 1997, as amended. Hence, the right of the government to assess the subject deficiency taxes has prescribed.

In his subject *Motion,* petitioner argues that the Waivers executed by the parties in the instant case, need not strictly comply with RMO No. 20-90 considering that in the assessment stage, the BIR is still in the process of determining the tax liability of the taxpayer.

We disagree.

Relative thereto, the Supreme Court held in the case of *"La Flor dela Isabela, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent",* [5] as follows:

> "**This Court had invalidated waivers which did not strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01, such as, but not limited to**: (a) failure to state the specific date within which the BIR may assess and collect revenue taxes; (b) failure to sign by the CIR as mandated by law or by his duly authorized representative; (c) failure to indicate the date of acceptance to determine whether the waiver was validly accepted before the expiration of the original three-year period; (d) failure to furnish the taxpayer of a copy of the waiver; (e) failure to indicate on the original copies of the waivers the date of receipt by the taxpayer of their file copy; (f) execution of the waivers without the written authority of the taxpayer's representative to sign the waiver on their behalf; (g) absence of any proof that the taxpayer was furnished a copy of the waiver; (h) a waiver signed by the Assistant Commissioner-Large Taxpayers Service and not by the CIR; (i) **<u>failure to specify the kind and amount of tax due</u>**; and (j) a waiver which refers to a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case." *(Emphasis and underscoring supplied)*

Here, the subject Waivers are void for failure to comply with the provisions of RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 as the same failed to indicate the specific type of the taxes to be assessed or collected, and therefore did not effectively extend the prescriptive period under Section 203 of the NIRC of 1997, as amended.

---

[5] G.R. No. 202105, April 28, 2021.

Respondent's right to due process under Sec. 228 of the NIRC of 1997 was violated, thus rendering, the subject FLD and Assessment Notices void.

Lastly, petitioner contends that the FLD and Assessment Notices are valid since the same were issued in accordance with Section 228 of the NIRC of 1997, as amended; and that respondent was duly apprised of the results of its protest as its protest was read, considered and incorporated in the FLD and Assessment Notices even though the FLD reflected a reiteration of the findings of the PAN.

The Court is not swayed.

It bears reiterating that Section 228 of the NIRC of 1997, as amended, mandates that taxpayers shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void.

In the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[6] (*Avon* case), the Supreme Court stressed that the BIR, in carrying out its quasi-judicial power, pertaining to tax investigation and assessment, necessarily demands the observance of due process because they affect the proprietary rights of a specific person. In doing so, the BIR ought to observe the fundamental requirements of due process in administrative proceedings. Among those requirements include, that the administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected; and that the administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

In this case, petitioner failed to observe the above-mentioned due process requirements in the issuance of FLD. Petitioner merely reiterated the same findings as stated in the PAN, without considering or explaining the grounds for rejecting the refutations and explanations made by respondent in its letter dated June 23, 2014. By failing to address the same, and without giving any particular facts upon which

[6] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

the FLD is based, the Court finds that the same is not compliant with the due process requirement in administrative proceedings.

Further, We reiterate our ruling in our Decision dated September 29, 2022, to wit:

> "We have explained that a significant part of the due process requirement in the issuance of tax assessment is that the concerned taxpayer, respondent in the instant case, must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the FLD-FAN. Specifically, the CIR or his duly authorized representative must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record. The concerned taxpayer must **not** be left unaware on how the CIR or his duly authorized representative appreciated the explanations or defenses raised in connection with the assessment."

In sum, petitioner's failure to observe the foregoing due process requirements effectively renders the subject tax assessment void. Hence, We find no cogent reason to disturb, modify or overturn the assailed Decision.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I concur solely on the ground elucidated on pages 8 to 9 of the ponencia)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I concur on the sole ground of prescription)
CATHERINE T. MANAHAN
Associate Justice

(I maintain my vote joining the Concurring and Dissenting Opinion of Justice Catherine T. Manahan in the assailed Decision of 29 September 2022)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(I maintain my vote joining the Concurring and Dissenting Opinion of Justice Catherine T. Manahan as reflected in the assailed Decision of 29 September 2022)
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice