REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MAXICARE HEALTHCARE CORPORATION,
Respondent.

CTA EB NO. 2325
(CTA Case No. 9246)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the reversal of the Decision[1] dated January 16, 2020 ("Assailed Decision") and Resolution[2] dated July 21, 2020 ("Assailed Resolution") of the Court of Tax Appeals First Division ("First Division"), cancelling the Final Decision on Disputed Assessment ("FDDA") dated December 09, 2015 and Formal Letter of Demand and Final Assessment Notice ("FLD/FAN"), both dated October 08, 2015. Petitioner also prays that a new one be rendered ordering Respondent to pay the amount of Php419,774,484.21 as deficiency value-added tax ("VAT") and compromise penalty of Php50,000 for taxable year 2012, plus twenty-five percent (25%) surcharge and twenty percent (20%) deficiency and delinquency

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1 Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan concurring; Docket, pp. 1777-1799.

2 *Id.*, pp. 1895-1899.

interest for late payment, pursuant to Section 249(C) of the National Internal Revenue Code ("NIRC") of 1997, as amended; and delinquency interest at the rate of twelve percent (12%) per annum from January 01, 2018 until the full amount is fully paid pursuant to Section 249(C) of the NIRC of 1997, as amended, in relation to Section 249(A).

The Parties

Petitioner Commissioner of Internal Revenue is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessment, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the NIRC of 1997, as amended.[3]

On the other hand, Respondent Maxicare Healthcare Corporation is a domestic corporation with principal office address located at Maxicare Tower, 203 Salcedo Street, Legaspi Village, Makati City. It was organized primary for the purpose of establishing, maintaining, conducting, and operating a prepaid group practice health care delivery system or a health maintenance organization (HMO) to take care of the sick, diseased, and disabled persons who are enrolled in a health care plan and to provide for the administrative, legal, and financial responsibilities of the organization.[4]

The Facts

The facts as found by the First Division are as follows:

> "On August 28, 2014, [Petitioner] issued a *Letter of Authority* (LOA) No. 126-2014-00000060, authorizing the examination of [Respondent's] books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2012 to December 31, 2012.
>
> On August 27, 2015, [Respondent] received a *Preliminary Assessment Notice* (PAN) dated August 25, 2015, with attached *Details and Discrepancies*, assessing it for deficiency VAT for calendar year 2012 in the amount of [Php]618,251,527.72, inclusive of penalties and surcharges.
>
> On September 14, 2015, [Respondent] protested the PAN through a letter dated September 10, 2015.

[3] *Id*, Decision, p. 1778.
[4] *Id*, Decision, pp. 1778-1779.

On October 15, 2015 [Respondent] received the *Formal Letter of Demand* (FLD) and *Final Assessment Notice* (FAN), both dated October 8, 2015, finding it liable for deficiency VAT in the amount of [Php]419,774,484.21, inclusive of penalties and surcharges, for calendar year 2012.

On November 9, 2015, [Respondent] filed with [Petitioner] a letter dated November 6, 2015 protesting the FLD/FAN.

Thereafter, [Petitioner] issued the *Final Decision on the Disputed Assessment* (FDDA) dated December 9, 2015, which [Respondent] received on December 21, 2015, reiterating the assessment of deficiency VAT and compromise penalty for the year 2012.

On January 20 2016, [Respondent] filed the instant *Petition for Review*"[5].

The Ruling of the First Division

On January 16, 2020, the First Division promulgated the Assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE**, the instant *Petition for Review* filed by [Respondent] Maxicare Healthcare Corporation is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated December 9, 2015 issued against [Respondent] is **WITHDRAWN** and **SET ASIDE**. Furthermore, the Formal Letter of Demand and Final Assessment Notice, both dated October 8, 2015, assessing [Respondent] for deficiency Value-Added Tax and Compromise Penalty for calendar year 2012, are likewise **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"[6]

Aggrieved, Petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 16 January 2020)"[7] on January 31, 2020, which the First Division denied in the Assailed Resolution, to wit:

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5 *Id.*, Decision, pp. 1778-1779.
6 *Id.*, Decision, p. 1798.
7 *Id.*, pp. 1800-1807.

> "**WHEREFORE**, [Petitioner's] *Motion for Reconsideration (Re: Decision promulgated 16 January 2020)* is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**"[8]

The Proceedings in the Court of Tax Appeals En Banc

On August 20, 2020, Petitioner filed a "Motion for Extension of Time to File Petition"[9] *via* registered mail, praying that it be given an additional period of fifteen (15) days from August 22, 2020 or until September 07, 2020 within which to file his petition.

On September 04, 2020, Petitioner filed the present "Petition for Review"[10].

On September 10, 2020, the Court issued a Minute Resolution[11] stating that since the Petition for Review has already been filed on September 04, 2020, the "Motion for Extension of Time to File Petition" is deemed granted.

On October 14, 2020, the Court issued a Resolution[12] ordering Respondent to comment on the Petition for Review.

On October 30, 2020, Respondent filed *via* registered mail its "Comment/Opposition (Re: Commissioner of Internal Revenue's Petition for Review dated 4 September 2020)"[13] ("Comment/Opposition").

On November 17, 2020, the Court issued a Resolution[14] noting Respondent's Comment/Opposition and referring the case to mediation.

Noting the parties' "No Agreement to Mediate"[15], the Court issued a Resolution on January 12, 2021, submitting the instant case for decision.

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8 *Id.*, Resolution dated July 21, 2020, p. 1899.
9 Rollo, pp. 1-6. Record shows that Petitioner received the July 21, 2020 Resolution on July 24, 2020; Docket, p. 1893.
10 *Id.*, pp. 7-23.
11 *Id.*, p. 52.
12 *Id.*, pp. 54-55.
13 *Id.*, pp. 107-153.
14 *Id.*, pp. 105-106.
15 *Id.*, p. 154.

Assignment of Error

Petitioner raises a single ground in support of its petition – that is, the First Division has erred in ruling that Respondent is not liable for deficiency VAT and compromise penalty, and that Petitioner violated Respondent's right to due process.[16]

The Arguments of Parties

Petitioner maintains that he observed both procedural and substantial due process in issuing the subject assessment. He indicated not only the deficiency tax involved and interest due, but also sufficiently stated the facts and the law on which the assessment is based.

Petitioner avers that Respondent's protest to the FLD/FAN was merely a rehash of its protest to the Preliminary Assessment Notice (PAN). Although the former was captioned as "Request for Reinvestigation", it was actually a mere reconsideration as no new arguments were raised nor any document submitted. Hence, there was nothing new to consider for Petitioner, and he cannot be faulted for not waiting for the sixty (60)-day period before the issuance of the FDDA.

On the other hand, Respondent avers that Petitioner's belated assertion that Respondent's protest was a request for reconsideration and not a request for reinvestigation is a mere afterthought, not worthy of credence. Said argument was raised for the first time in Petitioner's "Motion for Reconsideration (Re: Decision promulgated 16 January 2020)" filed with the court *a quo*, and as such he is already deemed to have waived this defense.

Respondent contends that its protest was clearly in the nature of a request for reinvestigation. In fact, contrary to Petitioner's assertion, Respondent submitted the supporting documents within the sixty (60)-day period. For having issued the FDDA prematurely, in violation of the due process rights of Respondent, the FDDA is null and void.

Lastly, Respondent points out that the presumption in favor of the correctness of tax assessment cannot be applied due to the glaring disregard by Petitioner of the established procedure laid down by the NIRC of 1997, as amended, and the Supreme Court.

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16 *Id.*, Petition for Review, Grounds *[sic]* for the Petition, p. 11.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision promulgated 16 January 2020)", on July 21, 2020. Petitioner received said Resolution on July 24, 2020. Pursuant to Rule 4, Section 2(a)(1)[17] in relation to Rule 8, Section 3(b)[18] of the Revised Rules of the Court of Tax Appeals[19] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until August 08, 2020 within which to file his Petition for Review.

However, on August 03, 2020, the Supreme Court issued Administrative Circular No. 43A-2020, in view of the Modified Enhanced Community Quarantine (MECQ) in the National Capital Region (NCR), which suspended the reglementary periods for the filings of petitions, appeals, complaints, motions, pleadings and other court submissions from August 04, 2020 to August 18, 2020.

On August 20, 2020, Petitioner filed a "Motion for Extension of Time to File Petition" *via* registered mail, praying that it be given an additional period of fifteen (15) days from August 22, 2020 or until September 07, 2020 within which to file his petition. The motion was deemed granted in a Minute Resolution dated September 10, 2020.

On September 04, 2020, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

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[17] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[18] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[19] A.M. No. 05-11-07-CTA, November 22, 2005.

We now proceed to the merits of the case.

For violating Respondent's right to due process, the subject assessment is void

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a replica of the "Motion for Reconsideration (Re: Decision promulgated 16 January 2020)"[20] filed by Petitioner on January 31, 2020 before the First Division, the arguments of which had been fully and exhaustively resolved by the Court in Division in the Assailed Decision and Assailed Resolution. Be that as it may, and if only to put Petitioner's mind to rest and for purposes of emphasis, the Court *En Banc* will discuss them anew.

We echo the First Division's ruling that part of the due process requirement to be observed in the issuance of a deficiency tax assessment is that the taxpayer, after filing a protest embodying a request for investigation, must be given a period of sixty (60) days within which to submit all relevant supporting documents in support thereof. This is found in Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99[21], as amended by RR No. 18-2013[22], the pertinent portions of which are quoted hereunder for ready reference:

> "**SEC. 228.** ***Protesting of Assessment.*** —
>
> xxx xxx xxx
>
> 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. **<u>Within sixty (60) days from filing of the protest</u>, 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

[20] Docket, pp. 1800-1807.

[21] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 06, 1999.

[22] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

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."[23]

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

> **(i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence.** It may involve both a question of fact or of law or both.
>
> **(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation.** It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

xxx xxx xxx

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23 *Emphasis and underscoring supplied.*

> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
>
> xxx xxx xxx"[24]

Petitioner contends, however, that Respondent's protest to the FLD/FAN was a request for reconsideration, not a request for reinvestigation, for which does the sixty (60) day period does not apply.

We are not persuaded.

From the provisions above, it may be concluded that a protest is a request for reconsideration if there is no submission of additional or supporting documentary evidence. Conversely, if the protest is a request for reinvestigation, the taxpayer is required to submit additional or supporting documents.

In the instant case, a careful scrutiny of the records show that Respondent indicated in its protest to the FLD/FAN[25] that it would furnish Petitioner with supporting documents, to wit:

> "Considering the clarifications made, we request for the reinvestigation of the BIR assessment for 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."[26]

Clearly, Respondent's manifestation of its intention to submit supporting documents in its protest only goes to show that Respondent is seeking a

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[24] *Emphasis and underscoring supplied.*
[25] Docket, Exhibit "P-7", pp. 1279-1289.
[26] *Underscoring supplied.*

reinvestigation of its tax assessment on the basis of additional evidence to be presented.

With Petitioner's issuance of the FDDA on December 09, 2015, before the lapse of the sixty (60) day period or mere thirty (30) days after the filing of the protest to the FLD/FAN, Respondent was essentially precluded from its right to submit supporting documents in support of its protest. This is in violation of the law which categorically grants the taxpayer a definite period within which to substantiate its administrative protest of the deficiency tax assessment issued against him. Such period cannot be dispensed with or waived by the taxing authority as the same is part and parcel of the due process requirement in the issuance of deficiency tax assessments.

Due process requires more than giving a person the right to be heard. Due process in administrative proceedings requires compliance with the following principles: (1) the right to a hearing, which includes the right to present one's case and submit supporting evidence, (2) **the consideration of the evidence presented**, (3) the decision must have some basis to support itself, (4) the evidence must be substantial; (5) **the decision must be rendered on the evidence presented at the hearing**, or at least contained in the record and disclosed to the parties affected, (6) the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate in arriving at a decision, and (7) the decision must be rendered in such manner that the parties would know the reasons for it and the various issues involved.[27]

By failing to wait for the submission of the supporting documents to the protest to the FLD/FAN, Petitioner unduly deprived the taxpayer of a real opportunity to be heard and thereby failing to satisfy the due process requirement under the law. The FDDA was issued having been based only on a partially completed protest and without an examination of Respondent's relevant supporting documents.

In view of the foregoing, We see no reason to reverse the conclusion and ruling of the First Division. The Court in Division correctly declared as null and void the deficiency VAT assessment against Respondent for taxable year 2012 for violating Respondent's right to administrative due process.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on September 04, 2020 is **DENIED** for lack of merit. Accordingly, the January 16, 2020 Decision and July 21, 2020 Resolution in CTA Case No. 9246 are **AFFIRMED**.

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[27] *See* Ang Tibay v. Court of Industrial Relations, et. al., G.R. No. L-46496, February 27, 1940, Department of Health v. Priscilla G. Camposano, et. al., G.R. No. 157684, April 27, 2005 and Coalition of Associations of Senior Citizens in the Philippines, Inc. (Senior Citizens Party-List) v. Commission on Elections, G.R. Nos. 206844-45 and 206982, July 23, 2013.

Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amounts representing the assessed deficiency VAT which was set aside and cancelled by this Court.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

maria ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above 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