REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1398** (CTA Case No. 8370)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
MERIAL PHILIPPINES, INC., Respondent.	Promulgated: MAY 09 2017 3:30pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review[1] seeking the nullification of the Amended Decision[2] dated August 26, 2015 (Amended Decision) the Court of Tax Appeals First Division (First Division), cancelling the assessments petitioner issued to respondent for deficiency income tax, deficiency value-added taxes and deficiency expanded withholding taxes for taxable year 2007.

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[1] Docket, pp. 6-16.

[2] Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring. Docket, pp. 19-25.

The Facts

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

[Respondent] Merial Philippines, Inc. is a domestic corporation organized and existing under Philippine laws, with principal office at Unit 2504, 25/F Discovery Centre, 25 ADB Avenue, Ortigas, Paisg City x x x.

On the other hand, [petitioner] Commissioner of Internal Revenue is the duly authorized head of the Bureau of Internal Revenue (BIR). [He] is vested with authority to administer all laws pertaining to internal revenue taxes and has the jurisdiction to decide disputed tax assessments.

On December 17, 2010, [petitioner] issued [respondent] a Preliminary Assessment Notice (PAN) for taxable year 2007 which was received by [respondent] on December 29, 2010. In the said PAN, the BIR informed [respondent] that the following were found due, to wit: [(1) deficiency income tax; (2) deficiency value-added tax; (3) deficiency expanding withholding tax (EWT).]

Thereafter, on January 7, 2011, [petitioner] issued the Formal Letter of Demand (FLD) with attached Assessment Notices against [respondent], for alleged deficiency income tax, deficiency value-added taxes and deficiency expanded withholding taxes in the amounts of ₱24,876,769.56, ₱3,905,681.12 and ₱1,530,272.06, respectively for taxable year 2007 x x x.

On January 13, 2011, [respondent] filed with the [petitioner] the Letter of Protest dated January 10, 2011 against the PAN.

Subsequently, on February 14, 2011, [respondent] filed with the [petitioner] another Letter of Protest dated January 13, 2011 against the said FLD.

On April 13, 2011, [respondent] then filed its Letter dated April 8, 2011 with the BIR, submitting certain supporting documents in connection with the said Letter of Protest.

In view of the BIR's failure to act within 180 days from the submission of the said documents pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, [respondent] filed the instant Petition for Review on November 9, 2011, praying as follows:

> 1. Declare null and void, and set aside, the Formal Letter of Demand dated 7 January 2011 and attached Assessment Notices issued by [petitioner], for having been issued in violation of Revenue Regulations (RR) No. 12-99;
>
> 2. Set aside the assessments of [petitioner] in its Formal Letter of Demand dated January 7, 2011 and attached Assessment Notices, as follows: deficiency income tax amounting to ₱24,876,769.56, deficiency VAT amounting to ₱3,905,681.12, and deficiency EWT amounting to ₱1,530,272.06, for lack of legal and factual basis; and
>
> 3. Declare that the three-year period to issue a valid assessment against [respondent] for taxable year 2007 has already prescribed.[3]

The Rulings of the First Division

On May 13, 2015, the First Division promulgated a Decision, partially granting the petition, thus:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is hereby **ORDERED TO PAY** the assessments covering deficiency EWT, deficiency VAT and deficiency income tax for taxable year 2007 in the **MODIFIED** amount of ₱15,800,666.62, inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows x x x.
>
> In addition, petitioner is hereby **ORDERED TO PAY**:
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> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency EWT of ₱869,222,20, VAT of ₱185,013.58 and income tax of ₱11,586,297.51, or in the aggregate amount of ₱12,640,533.29, computed from January 15, 2008, January 25, 2008 and April 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

[3] Division docket, pp. 487-491.

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱15,800,666.62 representing deficiency EWT, VAT and income tax and on the deficiency interest which have accrued as afore-stated in (a) computed from February 7, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.[4]

On Motion for Reconsideration filed on June 2, 2015,[5] the First Division issued an Amended Decision[6] on August 26, 2015, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on May 13, 2015 is hereby **MODIFIED** to read as follows:
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> > **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**, in view of respondent's violation of petitioner's right to due process before the subject assessments were issued. Accordingly, the Formal Letter of Demand dated January 7, 2011 and attached Assessment Notices issued by respondent against petitioner, demanding payment for deficiency EWT, deficiency VAT and deficiency income tax for taxable year 2007 are declared VOID and the same are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**[7]

Aggrieved, petitioner filed a Motion for Reconsideration (Amended Decision of 26 August 2015) on September 16, 2015, which the First Division denied in a Resolution[8] dated December 1, 2015, thus:

> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.[9]

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[4] Division docket, p. 541.
[5] Division docket, pp. 566-573.
[6] Id. at pp. 583-589.
[7] Id. at p. 588.
[8] Id. at pp. 608-612.
[9] Id. at p. 612.

On November 27, 2015, petitioner filed a Motion for Extension of Time to File Petition for Review,[10] which the Court granted in a Resolution[11] dated December 21, 2015. On December 29, 2015, petitioner filed the present Petition for Review.

On February 18, 2016, the Court issued a Resolution[12] ordering respondent to comment on the Petition for Review. On March 7, 2016, respondent filed its Comment/Opposition to Petition for Review.[13]

On April 18, 2016, the Court issued a Resolution[14] giving due course to the instant petition, and requiring the parties to submit their respective memoranda. Respondent filed its Memorandum[15] on May 27, 2016; while petitioner filed his Memorandum[16] on June 27, 2016, within the extended period granted.[17]

On July 26, 2016, the Court issued a Resolution[18] submitting the case for decision.

The Issues

Petitioner raises the following grounds in support of his petition:

I. The Honorable Court erred in ruling that there was a violation of respondent's right to due process.

II. The assessed deficiency income taxes, deficiency value-added taxes and deficiency expanded withholding taxes in the amounts of ₱24,876,769.56, ₱P3,905,681.12 and ₱1,530,272.06, respectively, for taxable year 2007 are valid.[19]

The Ruling of the Court

The petition is bereft of merit.

[10] Docket, pp. 1-4.
[11] Docket, p. 5.
[12] Docket, pp. 42-44.
[13] Docket, pp. 45-49.
[14] Docket, pp. 52-53.
[15] Docket, pp. 58-67.
[16] Docket, pp. 71-86.
[17] Docket, p. 69. Respondent was granted a final and non-extendible extension until June 26, 2017, which fell on a Sunday.
[18] Docket, pp. 89-90.
[19] Docket, p. 9.

Petitioner maintains that respondent was not deprived of due process in the issuance of the deficiency tax assessments since the latter was able to file its protest to both the PAN and the FAN. Petitioner claims that the respondent was informed of the factual and legal bases upon which the assessments were made because it received the PAN and the FAN, and in fact, was able to protest them.

We disagree.

Section 228 of the NIRC of 1997, as amended, states:

> SEC. 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> x x x
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> The taxpayers shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.
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> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Corollary to Section 228 of the NIRC of 1997, as amended, Section 3 of Revenue Regulations (RR) No. 12-99[20] provides the due process requirements in the issuance of a deficiency tax assessment. In particular, section 3.1.2 refers to the due process requirements for the issuance of the PAN and the subsequent issuance of the FLD, thus:

> 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.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[21] the Supreme Court stressed the importance of observing the requirements of due process outlined in Section 3 of RR No. 12-99, thus:

> While this has likewise been mooted by our discussion above, it would not be amiss to state that PSPCs rights to substantive and procedural due process have indeed been violated. The facts show that PSPC was not accorded due process before the assessment was levied on it. x x x
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> What is applicable is RR 12-99, which superseded RR 12-85, pursuant to Sec. 244 in relation to Sec. 245 of the NIRC implementing Secs. 6, 7, 204, 228, 247, 248, and 249 on the assessment of national internal revenue taxes, fees, and charges. **The procedures delineated in the said statutory provisos and RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it.** Respondent ignored RR 12-99 and did not issue PSPC a notice for informal conference and a preliminary assessment notice, as required. (Emphasis supplied)

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[20] 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, dated September 6, 1999.

[21] G.R. No. 172598, December 21, 2007.

In *Commissioner of Internal Revenue v. Metro Star Superama*,[22] the Supreme Court held that –

> x x x 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.)*

The Court *En Banc* likewise held in recent cases,[23] that a taxpayer's right to due process is violated if the FLD/FAN is issued prior to the lapse of the 15-day period given to the taxpayer to reply to or protest the PAN.

In this case, respondent received the PAN on December 29, 2010. The FLD was issued, a mere nine (9) days after, on January 7, 2011, well within the 15-day period provided by RR No. 12-99 for the taxpayer to respond to or protest the PAN. Clearly, respondent was deprived of its right to due process. As such, the FLD is void.

A void assessment bears no fruit and cannot give rise to an obligation to pay deficiency taxes. In view of the violation of respondent'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, the First Division correctly cancelled the Formal Letter of Demand dated January 7, 2011 and the attached Assessment Notices. Hence, there is no need to discuss the other issues raised by petitioner.

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[22] G.R. No. 185371, December 8, 2010.

[23] *Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation) v. Commissioner of Internal Revenue*, CTA EB No. 1273, May 17, 2016; *Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.*, CTA EB No. 1151, February 17, 2015; *Commissioner of Internal Revenue v. Yumex Corporation*, CTA EB No. 1139, August 11, 2015; and the consolidated cases of *Commissioner of Internal Revenue v. Apex Chemical Corporation* and *Apex Chemical Corporation v. Commissioner of Internal Revenue*, CTA EB Nos. 1382 and 1387, October 14, 2016.

WHEREFORE, premises considered, the Court hereby **DENIES** the Petition for Review for lack of merit. The Amended Decision dated August 26, 2015 of the First Division in CTA Case No. 8370 is hereby **AFFIRMED**.

SO ORDERED.

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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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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