REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2036
(CTA Case No. 8786)

Present:

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

\- versus -

MAX'S STA. MESA, INC.,
Respondent.

Promulgated:
NOV 18 2020
3:36 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) on 03 April 2019 pursuant to Section 3(b)[2], Rule 8, in relation to Section 2(a)[3],

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[1] *Rollo*, pp. 7-15.

[2] **SEC. 3**. *Who may appeal; period to file petition.*

...

(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

Rule 4 of the Revised Rules of the Court of Tax Appeals[4] (**RRCTA**). He seeks the reversal of the Decision dated 28 September 2018[5] (**assailed Decision**) and Resolution dated 27 February 2019[6] (**assailed Resolution**), respectively, of the Court's Special Third Division in CTA Case No. 8786, entitled *Max's Sta. Mesa, Inc. v. Commissioner of Internal Revenue.*

Petitioner is the duly appointed CIR[7], while respondent Max's Sta. Mesa, Inc. (**respondent/Max's**) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at 3rd Floor, SM City Sta. Mesa, Aurora Boulevard, Doña Imelda, Quezon City.

FACTS OF THE CASE

The Bureau of Internal Revenue (**BIR**) Revenue, Region No. 7, issued a Preliminary Assessment Notice (**PAN**) dated 08 January 2013[8] to respondent, representing deficiency Income Tax (**IT**) and Value-Added Tax (**VAT**) for the year ending 31 December 2009.[9]

In response, respondent filed a Protest dated 16 January 2013[10] to the said PAN. The BIR received the same on 21 January 2013.

Later, respondent also received a Formal Letter of Demand (**FLD**) dated 25 January 2013[11], together with Assessment Notice (**AN**)

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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.

3 **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:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]
. . .

4 A.M. No. 05-11-07-CTA dated 22 November 2005.

5 Division Docket, Volume II, pp. 892-918; Penned by Honorable Associate Justice Ma. Belen M. Ringpis-Liban, with Honorable Associate Justice Catherine T. Manahan, concurring, and Honorable Associate Justice Esperanza R. Fabon-Victorino, dissenting.

6 Id., pp. 993-995.

7 Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 289.

8 Exhibit "P-40", id., Volume II, pp. 543-546.

9 JSFI, id., Volume I, p. 289.

10 Exhibit "P-41", id., Volume II, pp. 547-549.

11 Exhibit "P-42", id., pp. 550-554.

No. 39-B093-09 dated 25 January 2013 for IT deficiency in the amount of ₱34,733,324.14[12], VAT deficiency in the amount of ₱60,269,628.46[13] and compromise penalty in the amount of ₱27,000.00[14], for the taxable year (**TY**) ending 31 December 2009.[15]

On 20 February 2013, respondent filed its Protest[16] to the said FLD but Jonas DP. Amora (**Amora**), Regional Director, Revenue Region No. 7, nevertheless issued against it a Final Decision on Disputed Assessment (**FDDA**) dated 13 February 2014.[17]

PROCEEDINGS BEFORE THE THIRD DIVISION

With the FDDA, respondent filed its prior Petition for Review[18] (CTA Case No. 8786) with this Court on 21 March 2014. The case was raffled to the Third Division where petitioner also filed his Answer.[19]

When the pre-trial was concluded[20], the trial proper ensued wherein respondent presented its three (3) witnesses, namely: Maria Carolyn C. Angeles[21] (**Angeles**), Marifloss S. Alilio[22] (**Alilio**), and the Independent Certified Public Accountant (**ICPA**), Emmanuel M. Florence[23] (**Florence**).

Angeles, respondent's Accounting Head, testified that: (1) respondent received the PAN dated 08 January 2013 on 04 January 2013; (2) respondent filed its Protest to the said PAN on 21 January 2013 to dispute the findings in the PAN; and, (3) on the same date of 21 January 2013, respondent received the FLD with the ANs dated 25 January 2013 that petitioner issued.[24]

12 Exhibit "P-43", id. p. 555.
13 Exhibit "P-44", id. p. 556.
14 Id., p. 557.
15 JSFI, id., Volume I, p. 289.
16 Exhibit "P-45", id., Volume II, pp. 558-564.
17 Exhibit "P-46", id., pp. 565-566.
18 Id., Volume I, pp. 14-25.
19 Answer filed on 23 May 2014, id., pp. 56-59.
20 Pre-Trial Order[20] was issued on 02 September 2014.
21 See TSN of 22 September 2014.
22 See TSN of 20 October 2014.
23 See TSN of 18 August 2015.
24 Judicial Affidavit, Exhibit "P-52", Division Docket, Volume II, pp. 616-627.

On the other hand, Alilio testified essentially that: (1) she is respondent's Comptroller since 2008; (2) her duties and responsibilities included helping and overseeing the preparation and filing of respondent's tax returns with the BIR; and, (3) she supervised the filing of respondent's Annual Income Tax Return, Monthly and Quarterly VAT Returns, Annual Information Returns, Withholding Tax Returns (Expanded, Compensation, and Final) all for TY 2009.[25]

Lastly, Florence, the ICPA, testified, among others, that: (1) he conducted an actual examination, evaluation and audit of the voluminous documents of respondent; and, (2) after having completed their examination, they have submitted their Final Report[26] on 20 April 2015.[27]

On 22 September 2015, respondent filed its Formal Offer of Evidence[28] (**FOE**) without petitioner's comment, *per* Records Verification Report dated 28 October 2015.[29]

In its Resolution dated 21 January 2016[30], the Third Division admitted respondent's exhibits, except: (1) Exhibits "P-45"[31], "P-64-R"[32], "P-64-X"[33], "P-64-Y"[34], "P-64-OO"[35], "P-64-XX"[36], "P-64-YY"[37] and "P-64-ZZ"[38], for failure to present the originals for comparison; (2) Exhibit "P-64-SS"[39], for failure of the exhibit formally offered to correspond with the document actually marked; and, (3) Exhibits "P-51-A", "P-51-B" and "P-51-C"[40], for not being found in the records of the case.

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25 Judicial Affidavit, Exhibit "P-53", id., pp. 628-644.
26 Exhibit "P-76", ICPA Report.
27 Judicial Affidavit, Exhibit "P-77", Division Docket, Volume II, pp. 653-660.
28 Id., Volume I, pp. 418-441.
29 Id., Volume II, p. 664.
30 Id., pp. 684-686.
31 Described as "Protest filed on February 20, 2013 against the FAN and FLD issued by respondent".
32 Described as "N/A Taxes and licenses (Breakdown of expense)".
33 Described as "N/A Documentary Stamp Tax (Breakdown of expense)".
34 Described as "N/A Donation (Breakdown of expense)".
35 Described as "G/A Taxes and licenses (Breakdown of expense)".
36 Described as "G/A Miscellaneous".
37 Described as "Bank charges".
38 Described as "Other charges".
39 Described as "G/A Royalties (Breakdown of expense)".
40 Included in the description "Various transmittal letters duly received by the BIR which proves that we dutifully submitted to the BIR supporting documents in compliance with their audit investigation".

Respondent filed its Motion for Reconsideration[41] (**MR**) while petitioner failed[42] to file his comment thereon.

In its Resolution dated 10 May 2016[43], the Third Division partially granted respondent's MR and admitted Exhibit "P-45"[44] as faithful reproduction of the original as well as Exhibit "P-64-SS"[45], as correctly denominated. However, Exhibits "P-64-R", "P-64-X", "P-64-Y", "P-64-OO", "P-64-XX", "P-64-YY" and P-64-ZZ"[46] were still denied admission for failure to establish their admissibility, as required by the rules.

Petitioner, on the other hand, also presented three (3) witnesses: Revenue Officer (**RO**) Faridah C. Lao[47] (**Lao**); RO Rocky D. Torres[48] (**Torres**); and, RO Owen R. Villanueva[49] (**Villanueva**).

RO Lao testified, among others, that: (1) she conducted a re-examination/reinvestigation of respondent's accounting and other business records to verify the accuracy of payment of all internal taxes; (2) based on the records, the original examination was conducted by ROs Torres and Ma. Teresita B. Doma (**Doma**), as authorized by the Letter of Authority (**LOA**) No. 00014334 dated 24 May 2010[50]; (3) she was authorized to conduct the re-examination/reinvestigation of respondent by virtue of a Memorandum of Assignment No. 039-0313-02406 dated 21 March 2013[51] issued to her; and, (4) due to respondent's failure to submit documents in support of its Protest, she prepared the RO's Audit Reports and recommended that the case be forwarded to the Assessment Division and that the amount assessed be eventually collected.

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41 Division Docket, Volume II, pp. 687-690.
42 Records Verification Report dated 16 March 2016, id., p. 694.
43 Id., pp. 707-708.
44 Supra at note 31.
45 Supra at note 39.
46 Supra at notes 32-38.
47 See TSN of 07 November 2016, with Judicial Affidavit marked as Exhibit "R-15", Division Docket, Volume II, pp. 716-721.
48 See TSN of 05 December 2016, with Judicial Affidavit marked as Exhibit "R-16", id., pp. 759-764.
49 See TSN of 20 March 2017, with Judicial Affidavit also marked as Exhibit "R-16", id., pp. 795-799.
50 BIR Records, p. 520.
51 Id., p. 620.

RO Torres, on the other hand, testified that: (1) he is the RO who conducted the examination/investigation of respondent's accounting and other business records pursuant to LOA No. 00014334; (2) his recommendation was approved by the issuance of the PAN and subsequently, the FLD; (3) as far as he can recall, he personally served the PAN on respondent on the same day it was issued; and, (4) the FLD was likewise served on the day of its issuance.

Lastly, RO Villanueva declared on the witness stand that: (1) he is the RO who reviewed the examination/investigation of respondent's accounting and other business records; and, (2) based on the records, it was ROs Torres and Doma who actually conducted the examination of respondent's aforesaid records.

On 16 June 2017, petitioner filed a Motion to Admit Formal Offer of Exhibits[52] (with the attached FOE[53]), alleging that he failed to submit his FOE on time due to heavy workload and the transfer of Revenue Region No. 7 to its new office. Respondent filed its Comment[54] on 12 July 2017.

On 25 July 2017[55], the Third Division granted petitioner's Motion to Admit and allowed accordingly all of petitioner's exhibits, with a notation that only the Judicial Affidavits of Torres and Villanueva and their respective signatures thereon have been both marked as Exhibits "R-16" and "R-16.1".[56] The Third Division likewise directed the parties to submit their respective memoranda within thirty (30) days from notice.

Respondent submitted its Memorandum[57] on 20 September 2017 while petitioner failed to file the same.[58] On 18 September 2018, respondent filed a Motion to Admit Supplemental Memorandum[59] but the Special Third Division denied the same.[60]

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52 Division Docket, Volume II, pp. 832-834.
53 Id., pp. 835-844.
54 Id., pp. 847-850.
55 See Resolution, id., pp. 853-854.
56 See notes 48 and 49.
57 Division Docket, Volume II, pp. 861-877.
58 *Per* Records Verification Report dated 14 September 2017, id., p. 860.
59 Id., pp. 880-882.
60 Resolution dated 24 September 2018, id., p. 890; The Third Division was reconstituted after the issuance of the CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court."

On 28 September 2018, the Special Third Division issued the assailed Decision[61], the dispositive portion of which reads:

> ...
>
> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and value-added tax assessments for taxable year 2009, amounting to ₱95,002,952.60 as found in FAN/FLD Demand No. 39-B093-09, are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**
>
> ...

Alleging that the Special Third Division erred in its disposition, petitioner filed an MR[62] contending that: (1) the Court has no jurisdiction over the instant case; and, (2) the assessments for TY 2009 are valid and binding as respondent was given the opportunity to explain its side and thus the requirements of due process were complied.

In opposition[63], respondent stated that: (1) the Court has jurisdiction over the present case; (2) the determination to submit supporting documents is within the taxpayer's discretion; (3) the FLD, ANs and Details of Discrepancies, all dated 25 January 2011, are void for BIR's failure to observe due process; (4) the FLD, ANs and Details of Discrepancies, all dated 25 January 2013, did not set and fix the liability, although still subject to modification or adjustment; and, (5) a void assessment produces no legal effect.

In the Special Third Division's 27 February 2019 Resolution[64], petitioner's MR was denied.

Unrelenting, petitioner filed with the Court *En Banc* the instant Petition for Review in his bid to have the assailed Decision and Resolution set aside.

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61 Supra at note 5.
62 Division Docket, Volume II, pp. 919-925.
63 Opposition/Comment, id., pp. 933-944.
64 Supra at note 6.

Here, petitioner reiterates the assigned errors in his MR as grounds to support his present appeal.

Specifically, petitioner insists that the Special Third Division erred in considering respondent's Protest as request for reconsideration. According to petitioner, the fact that the documents were made available for verification shows that it was a request for reinvestigation, especially so that respondent also expressed its clear intent to submit additional documents (in support thereof). Thus, due to respondent's failure to submit additional documents for reinvestigation, the assessment had long become final, executory and demandable. As a result, the Court lost jurisdiction over the case.

Petitioner also maintains that there was no denial of due process since the FLD and ANs issued to respondent are valid and binding. The latter was given the opportunity to explain its side. Likewise, respondent's witness, Angeles, already testified that respondent received the PAN on 04 January 2013 and the FAN on 21 January 2013 and was given time to reply.

In response to petitioner, respondent merely replicates its arguments in its earlier Opposition/Comment[65] to the former's MR on the assailed Decision.

ISSUES

As can be gleaned from the foregoing arguments of the parties, the present Petition for Review calls for the resolution of the following issues:

I.
WHETHER THE SPECIAL THIRD DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE INSTANT CASE; AND,

II.
WHETHER THE SPECIAL THIRD DIVISION ERRED IN RULING THAT THE ASSESSMENTS FOR TAXABLE YEAR 2009 ARE VOID FOR LACK OF DUE PROCESS.

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65 *Rollo*, pp. 49-58.

RULING OF THE COURT *EN BANC*

After a thorough review of the records, the Court *En Banc* is constrained to deny petitioner's bid for the reversal of the 28 September 2018 Decision and 27 February 2019 Resolution in CTA Case No. 8786.

The reasons are essayed below, in *seriatim*.

THE COURT HAS JURISDICTION OVER THE PRIOR PETITION FOR REVIEW.

Petitioner's attack on the Court in Division's jurisdiction over respondent's previous Petition for Review is premised on the latter's supposed failure to properly protest the FLD. He maintains that respondent's request for reinvestigation did not carry any supporting documents.

We do not agree.

Revenue Regulations (**RR**) No. 18-2013[66], amending RR 12-99[67] restated the previous definitions laid down in RR 12-85[68], as follows:

> ...
>
> 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

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66 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

67 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 Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

68 Procedure covering administrative protests on assessments of the Bureau of Internal Revenue.

> 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.[69]
>
> ...

Simply put, a request for reconsideration is a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence while a request for reinvestigation is a similar plea but involves newly discovered or additional evidence (that a taxpayer intends to present in the reinvestigation).

In respondent's case, it must be noted that the Protest to the FLD did not clearly state whether the same was a request for reconsideration or request for reinvestigation. In arguing that said Protest to the FLD was in the nature of a request for reinvestigation, petitioner quoted the following portions thereof:

> ...
>
> "**The company's books and returns, which are available for verification**, will show that all income payments made by the Company to its suppliers were fully and properly accounted for, thus negating any claim of undeclared income on the part of the Company. xxx"
>
> ...
>
> "The Company maintains that it properly withheld tax from its income payments subject to withholding tax in accordance with the provisions of the Tax Code, as amended, and Revenue Regulations (RR) No. 2-98, as amended. **The Company's records, which are available for verification**, clearly disprove the alleged non-withholding of taxes. xxx"
>
> ...
>
> "We reiterate the Company's position that it complied with the substantiation requirements provided under Section 114 of the Tax Code, as amended, thus entitling it to claim the tax credits

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[69] Underscoring in the original text.

> carried over from previous period. **Your examiners may re-examine our records in (sic) order verify this assertion.** xxx"[.][70]
>
> ...

A closer perusal of the Protest to the FLD militates against petitioner's claim. While it is correct that indeed respondent stated that its records are available for verification, petitioner conveniently omitted the succeeding sentences or portions showing that respondent did not intend to submit additional documents in support of the said Protest and instead pointed out the previous submissions it made when it filed its Protest to the PAN. The entire portion of the first two (2) paragraphs cited above in fact reads:

> ...
>
> The company's books and returns, which are available for verification, will show that all income payments made by the Company to its suppliers were fully and properly accounted for, thus, negating any claim of undeclared income on the part of the Company. **Moreover, the Company has submitted a reconciliation schedule to dispute the discrepancy of P25,501,348.13 in its position paper on the Preliminary Assessment Notice (PAN).**
>
> ...
>
> The Company maintains that it properly withheld tax from its income payments subject to withholding tax in accordance with the provisions of the Tax Code, as amended, and Revenue Regulations (RR) No. 2-98, as amended. The Company's records, which are available for verification, clearly disprove the alleged non-withholding of taxes. **The Company has submitted a reconciliation schedule to dispute the above-stated discrepancy together with its position paper on the PAN.**[71]
>
> ...

In addition, it is further provided in respondent's Protest to the FLD that:

> ...
>
> **The Company's disbursement documents and the required attachments which were submitted to the BIR,** will disclose the Company complied with the substantiation

[70] *Rollo*, pp. 11-12; Emphasis in the original text.
[71] Exhibit "P-45", Division Docket, Volume II, pp. 560-561; Emphasis supplied.

> requirements set forth in Section 113 of the Tax Code, as amended, thus, entitling the Company to claim the corresponding input tax. This clearly negates the findings of your revenue examiners.[72]
>
> ...

From the foregoing statements, it is evident that respondent's Protest merely invokes a re-evaluation of the assessment on the basis of existing records already previously submitted to the BIR, without intending to present additional evidence. Similarly, respondent's statements that the company records were, at the time, available for verification could not be stretched to mean that it will submit them to the BIR to support its Protest.

A closer scrutiny of the Protest will even show that it was not respondent's outright intention to submit evidence. The last paragraph of the said Protest to the FLD states:

> ...
>
> We reserve the right to submit additional documents and information to further support this protest.
>
> ...

In the absence thus of a clear and unequivocal contrary statement to the foregoing, the Court *En Banc* is inclined to treat respondent's Protest to the FLD as a request for reconsideration.

Considering that respondent's Protest to the FLD is in the nature of a request for reconsideration, its failure to submit the supporting documents within sixty (60) days from the filing of the same should then not render the assessment final, executory and demandable.

At any rate, the subsequent issuance of RR 18-2013, amending RR 12-99 reveals that even if respondent's Protest to the FLD were to be treated as a request for reinvestigation, its failure to submit additional documents in support thereof would only render the assessment final, in the sense that "the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence". The pertinent provision of RR 18-2013 reads:

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72 Id., p. 563; Emphasis 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.**[73]
>
> ...

RR 18-2013 became effective on 15 December 2013 or during the pendency of respondent's Protest to the FLD and prior to the issuance of FDDA. As stated, such provision clarifying that the term "final" only means that taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence is applicable in respondent's case.

We quote in agreement the Special Third Division's disquisition, to wit:

> ...
>
> From the foregoing, it is indubitable that the word "*final*" in the phrase "*the assessment shall become final*" means that taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence which, consequently, leads to the [Protest] being denied. It cannot be taken to mean as a bar to avail the remedy of appeal because the rules also say that if the taxpayer opts to await the final decision of the Commissioner on the disputed assessment, the taxpayer can appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.
>
> It is, in fact, exactly what happened in the case at bar. Petitioner filed its protest to the FLD/FAN on February 20, 2013. Although it could have appealed to the CTA within 30 days after the expiration of the 180-day period which would have ended on August

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[73] Emphasis supplied, italics and underscoring in the original text.

> 19, 2013, petitioner opted to await the final decision of respondent which it received on March 4, 2014. The rules state that petitioner had 30 days therefrom within which to appeal to the CTA. Therefore, petitioner had until April 3, 2014 within which to file its appeal. Since the Petition for Review was timely filed on March 21, 2014, the appeal has been perfected and this Court has jurisdiction over this case.[74]
>
> ...

THE SUBJECT ASSESSMENT AGAINST RESPONDENT IS VOID FOR FAILURE TO OBSERVE DUE PROCESS.

We do not likewise subscribe to petitioner's insistence that the Special Third Division erred in finding the FLD void as it was issued before the expiration of the period within which respondent could submit its Protest to the PAN.

As respondent's witness (Angeles) testified, respondent received the PAN on 04 January 2013. Counting fifteen (15) days therefrom, respondent had until 19 January 2013 within which to file its Protest to the PAN. However, 19 January 2013 fell on a Saturday; thus, respondent had until the next working day, 21 January 2013, within which to file the said reply.

In the instant case, respondent had in fact filed its Protest to the PAN on 21 January 2013. However, respondent also received petitioner's FLD and ANs on the same day. Therefore, it is clear that petitioner did not await the expiration of respondent's period within which to file its Protest to the PAN before issuing the subject FLD and ANs.

During the time material to petitioner's issuance of the PAN and FLD, Section 3.1.2 of RR 12-99 reads:

> ...
>
> 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

[74] Italics in the original text.

> 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.**[75]
>
> ...

In not awaiting the 15-day period (to reply to the PAN) to fully expire, petitioner did not accord respondent due process as the FLD was issued on the very same day such Protest to the PAN was submitted to the BIR. The reply is an ordained procedure, a part of due process, to give chance to respondent to explain or rebut the findings in the PAN. This opportunity was, however, rendered useless with petitioner's immediate issuance of the FLD, as stated.

In *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[76], the Supreme Court, in a Resolution dated 19 June 2019, resolved to deny the Petition for Review on *Certiorari* subject thereof for failure to show that the Court *En Banc* committed a reversible error in cancelling and withdrawing the assessments issued against respondent therein. The Supreme Court went on to rule that:

> ...
>
> In this case, the records show that respondent received the PAN on February 5, 2009. **However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**
>
> In *CIR v. Metro Star Superama, Inc.*, **the Court emphasized that the PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural**

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75 Emphasis supplied.

76 G.R. No. 227616.

> **rights and the failure of the CIR to <u>strictly comply</u> with the requirements laid down by law and its own rules, as in this case, is a denial of the taxpayer's right to due process.**[77]
>
> ...

Furthermore, in a plethora of cases[78] decided by this Court *En Banc*, it was ruled consistently that the taxpayer's right to due process was violated when the FLD was issued prior to the lapse of the 15-day period given to it to respond to the PAN.

Particularly, in *Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle - Health Science Institute), Inc.*[79], the Court *En Banc* held:

> ...
>
> Here, **respondent received a copy of the PAN dated December 12, 2008 on <u>January 5, 2009</u>**. Pursuant to RR No. 12-99, respondent has fifteen (15) days or until **<u>January 20, 2009</u>** within which to file a reply or protest against the PAN.
>
> Respondent filed its protest to the PAN on **<u>January 20, 2009</u>**. Barely a day after it filed its protest to the PAN or on January 21, 2009, respondent received the Formal Letter of Demand and Assessment Notice No. 54-2005 **<u>which are both dated January 9, 2009</u>**.
>
> Evidently, petitioner did not wait for respondent to reply to the PAN nor considered the arguments raised in respondent's protest thereto. The Formal Letter of Demand and Assessment Notice No. 54-2005 were already prepared by petitioner as early as January 9, 2009 or way before the lapse of the fifteen-day period within which petitioner could file a reply or protest to the PAN.
>
> ...

Where the FLD was issued not a day after the respondent filed its Protest but on the very same day it did, due process was not

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77 Citation omitted, emphasis supplied and underscoring in the original text.

78 *Commissioner of Internal Revenue v. Merial Philippines, Inc.*, CTA EB No. 1398 (CTA Case No. 8370), 09 May 2017; *Commissioner of Internal Revenue v. Apex Chemical Corporation*, CTA EB Nos. 1382 and 1387 (CTA Case No. 8698), 14 October 2016; *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, CTA EB No. 1139 (CTA Case No. 8331), 11 August 2015; *Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.*, CTA EB No. 1151 (CTA Case No. 8095), 17 February 2015.

79 CTA EB No. 1151, 17 February 2015; Emphasis and underscoring in the original text.

observed hence, the cancellation and withdrawal of the FLD issued (against respondent) must likewise be struck down.

While petitioner may insist that respondent was nonetheless given the benefit of the 15-day period as the FLD was issued on 21 January 2013 or seventeen (17) days after respondent received the PAN on 04 January 2013, such would still fall short of the standards laid down by the Supreme Court in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[80](**Avon**).

In the abovementioned case, the Supreme Court, citing *Ang Tibay v. Court of Industrial Relations*[81], ruled that "[n]**ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.**" The Supreme Court further explained in *Avon* that:

> ...
>
> **However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice. The Bureau of Internal Revenue chose to ignore Avon's explanations** and refused to cancel the assessments unless Avon would agree to pay the other deficiency assessments.
>
> ...
>
> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**

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80 G.R. Nos. 201398-99, 03 October 2018; Citations omitted, emphasis supplied and italics in the original text.

81 G.R. No. L-46496, 27 February 1940.

> *In Edwards v. McCoy:*
>
> > The object of a hearing is as much to have evidence considered as it is to present it. **The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.**
>
> In *Ang Tibay*, **this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he *asserts but the tribunal must consider the evidence presented.*"**
>
> ...
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.**
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.**
>
> ...

With the above, the Court *En Banc* finds no reason to reverse the Special Third Division's assailed Decision and Resolution cancelling and withdrawing the FLD issued to respondent.

WHEREFORE, with the foregoing, petitioner Commissioner of Internal Revenue's Petition for Review filed on 03 April 2019 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 28 September 2018 and Resolution dated 27 February 2019 of the Special Third Division, respectively, in CTA Case No. 8786, entitled *Max's Sta. Mesa, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
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