REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

*Third Division*

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| **THE ORCHARD GOLF AND COUNTRY CLUB, INC.,** *Petitioner,* | **CTA CASE NO. 8986** |
| | Members: |
| - versus - | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: SEP 01 2020 1:04 p.m. |

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# RESOLUTION

***RINGPIS-LIBAN, J.:***

Submitted before this Court is Respondent's **Motion for Reconsideration (Re: Decision dated 14 January 2020)**, filed on February 17, 2020 with Petitioner's **Comment (Re: Motion for Reconsideration dated 14 February 2020)**, filed through registered mail June 2, 2020 and received by this Court on June 17, 2020.

On January 14, 2020, a Decision was promulgated by this Court, cancelling Respondent's deficiency assessment for prematurely issuing the Formal Letter of Demand/Final Assessment Notice (FLD/FAN), the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FLD/FAN dated March 28, 2014, assessing Petitioner for deficiency taxes in the aggregate amount of ₱113,766,847.77, for taxable year 2010, is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

In his Motion, Respondent assails the above ruling and moves for reconsideration of the aforesaid Decision based on the following grounds:

I. The Honorable Court erred in ruling that assessment issued against Petitioner is void.

II. The Honorable Court erred in ruling that Petitioner is not liable for deficiency taxes for taxable year 2010.

As to the first ground, Respondent maintains that Petitioner's right to administrative due process was not violated since Petitioner was given the opportunity to refute the Preliminary Assessment Notice (PAN) before the FLD/FAN was issued. He continues that Petitioner's protest letter was actually considered and its request for reinvestigation was in fact even granted. However, Petitioner still failed to substantiate its claim that it is not liable for the deficiency taxes for taxable year 2010. Nonetheless, Respondent argues that even if the FLD/FAN was issued two days after Petitioner's receipt of the PAN, its request for investigation with respect to the FLD/FAN bears no new allegations relative to its protest letter to the PAN. Hence, the eventual granting of the request for investigation purportedly cures whatever defect there is, if any.

With regard to the second ground, Respondent claims that Petitioner is liable for deficiency income tax. As per Revenue Memorandum Circular (RMC) No. 35-2012[1], it specifically states that clubs organized and operated exclusively for pleasure, recreation and other non-profit purposes shall now be subject to income tax and value-added tax (VAT). Respondent further asserts that the tax exemption initially enjoyed by clubs in the National Internal Revenue Code (NIRC) of 1977, had not been carried over in the NIRC of 1997. As such, by having been deleted in the revision of the NIRC, the lawmaker's intention to remove the exemption granted to recreational clubs is clear and specific. Thus, RMC No. 35-2012 only calls for the strict implementation of Sec. 27 of the NIRC of 1997.

On the other hand, in its Comment, Petitioner insists that Respondent violated Section 228 of the NIRC, as implemented by Revenue Regulations (RR) No. 12-99[2], in relation to its constitutional right to due process of law. Petitioner emphasizes that Section 3 of RR No. 12-99, as amended by RR No. 18-2013[3], provides that the FLD/FAN shall issue only after the lapse of the 15-day reglementary period from receipt of the PAN. Petitioner reiterates that it received the PAN on March 26, 2014, and then on March 28, 2014, or barely two (2) days from its receipt of the PAN, and before the lapse of the 15-day reglementary period within which it may protest the PAN, Respondent issued

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[1] "SUBJECT: Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes", August 3, 2012.

[2] "SUBJECT: 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 6, 1999.

[3] "SUBJECT: 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.

the FLD/FAN. Clearly, the premature issuance of the FLD/FAN makes the same null and void.

Furthermore, Petitioner also asseverates that the grant of its request for reinvestigation did not cure the procedural defect in the assessment process because the reinvestigation is a sham and without any bona fide intent to consider Petitioner's arguments. Petitioner claims that the revenue officer, Edwin Aritumba, who handled and performed the said reinvestigation has confirmed during his cross-examination that he did not perform any audit of Petitioner's case, and as a result of this omission, his knowledge of what the case is all about was found wanting.

Lastly, Petitioner believes that it is not liable for deficiency income tax and VAT as it is a non-stock, non-profit organization organized for "*purpose of promoting the social, educational, and athletic activities among its stockholders*", citing the case of *Association of Non-Profit Clubs, Inc (ANPC), et al. v. Bureau of Internal Revenue, et al.*[4] In the cited case, the Supreme Court stated that *RMC No. 35-2012 erroneously foisted a sweeping interpretation that membership fees and assessment dues are sources of income of recreational clubs from which income tax liability may accrue,* Petitioner continues that such membership dues were actually used to defray costs and expenses for the upkeep of the its facilities. In the same vein, since membership dues and assessment dues do not involve a sale, barter or exchange of goods or properties, or sale of a service, VAT is therefore not applicable.

After due consideration of the arguments raised by both parties, Respondent's Motion for Reconsideration is bereft of merit.

Again, it is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In this regard, this Court reiterates that in tax cases, the right to due process is one of the limitations on the State's power to tax, being incorporated in tax statutes such as the NIRC of 1997 and its implementing rules and regulations. The right to due process requirement was specifically included in Section 228 of the said Tax Code and Section 3 of RR No. 12-99, as amended by RR No. 18-2013, wherein it was emphasized that as part of due process in the issuance of tax assessments, a taxpayer is given fifteen (15) days from receipt of the PAN to file a protest with the BIR. It is only after the lapse of the prescribed 15-day period that Respondent may issue the corresponding FLD or FAN.

In the analogous case of *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation),*[5] the Supreme Court emphasized that the taxpayer must be given an opportunity to be heard and the Bureau of Internal Revenue (BIR), for their part, must be consider the evidence presented.

[4] G.R. No. 228539, June 26, 2019.
[5] G.R. No. 227616, June 19, 2019.

The High Court decreed that Nippo Metal Tech Phils., Inc.'s right to due process of law was violated by the BIR when the FLD/FAN was issued prior to the lapse of the 15-day period given to Nippo Metal Tech Phils., Inc. within which to respond to the PAN as mandated under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18- 2013.

Similarly, in this case, the PAN dated February 17, 2014 was received by Petitioner on March 26, 2014. Petitioner had fifteen (15) days or until April 10, 2014, within which to respond to the said PAN. However, Respondent issued the subject FLD/FAN on March 28, 2014, which is before the lapse of the said 15-day period for it to protest or respond thereto. Again, the right of Petitioner to respond to the PAN is an essential part of the due process requirements. By issuing the FLD/FAN within the 15-day period, which was supposed to be allotted to reply to the PAN, the said FLD/FAN was therefore prematurely issued, thereby depriving Petitioner of the opportunity to be heard on the PAN which tantamount to a denial of the its right to due process of law.

In view of the foregoing, this Court maintains the conclusion reached in the Decision assailed and finds no compelling reason to reverse the same. Accordingly, the discussion on the other issue presented in the present Motion becomes unnecessary.

**WHEREFORE**, premises considered, Respondent's Motion for Reconsideration (Re: Decision dated 14 January 2020), is **DENIED** for lack of merit.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**WE CONCUR:**

**ERLINDA P. UY**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice