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)

- versus -

Present:

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

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

Promulgated:
JUN 0 8 2021 11:23 a.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is petitioner Commissioner of Internal Revenue's (**petitioner**'s) Motion for Reconsideration (Decision dated November 18, 2020) (**MR**) filed *via* registered mail on 18 December 2020 and received by the Court on 04 January 2021, with Comment/Opposition thereto from respondent Max's Sta. Mesa, Inc. (**respondent**) filed on 13 January 2021.

The MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 18 November 2020[1] (**assailed Decision**). The dispositive portion of the assailed Decision reads:

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[1] Rollo, pp. 93-111.

> ...
>
> **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.**
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> ...

In his MR, petitioner argues that the Court *En Banc* erred in holding that it has jurisdiction over the instant case. According to him, respondent's protest should have been considered as a request for reinvestigation, citing the several statements made therein expressing that its records are available for verification. Thus, respondent's failure to submit documents in support of its protest made the assessments final, executory and demandable. Consequently, the Court no longer had jurisdiction to entertain the same.

Petitioner also imputes error on the part of the Court *En Banc* when it ruled that the assessments for taxable year (**TY**) 2009 are void for lack due process. Petitioner claims that since respondent was given the opportunity to explain its side, the due process requirement was complied with. In relation thereto, petitioner asserts that respondent nevertheless received the Assessment Notices[2] (**ANs**) at exactly fifteen (15) days after its receipt of Preliminary Assessment Notice[3] (**PAN**) hence, no irregularity was committed.

In its Comment/Opposition, respondent primarily avers that the arguments raised in petitioner's MR merely echoes the ones contained in his previous pleadings. Respondent adds that each issue has already been extensively discussed and categorically passed upon in the Special Third Division's Decision dated 28 September 2018[4] and Resolution dated 27 February 2019[5] as well as in the herein assailed Decision.

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2 Exhibits "P-43" and "P-44", Division Docket, Volume II, pp. 555-557.
3 Exhibit "P-40", id., pp. 543-546.
4 Id., pp. 892-918.
5 Id., pp. 993-995.

Respondent also maintains its position that a request for reinvestigation requires two things, namely: (1) there must be a request for reinvestigation; and, (2) the Bureau of Internal Revenue (**BIR**) must have granted it. Respondent insists that there is no evidence to support that a reinvestigation was requested and such request was granted.

Lastly, respondent claims that petitioner's assessments against it are void for BIR's failure to observe due process. According to it, the Formal Letter of Demand[6] (**FLD**), ANs for income tax (**IT**) and value-added tax (**VAT**) were issued without giving respondent an opportunity to respond to the PAN or consider the arguments raised in its Protest to the PAN.[7] Petitioner contends that he is mandated to wait for fifteen (15) days to allow respondent to file its reply to the PAN, as prescribed under Section 228[8] of the National Internal

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

7 Exhibit "P-41", id., pp. 547-549.

8 **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 pre-assessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(d) When the excise tax due on excisable articles has not been paid; or
(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Revenue Code (**NIRC**) of 1997, as amended, in relation to Revenue Regulations (**RR**) No. 12-99.[9]

We resolve.

After going over the arguments raised by the parties, We are constrained to deny petitioner's MR.

At the onset, it must be emphasized that petitioner did not present any new matter that the Special Third Division and the Court *En Banc* have not yet considered or passed upon.

It must be noted that while respondent's Protest[10] to the FLD essentially states that its records are available for verification, the succeeding sentences or portions thereof would indicate that it 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. Thus, it is evident that respondent's Protest to the FLD merely invokes a re-evaluation of the assessment on the basis of existing records which have already been submitted to the BIR, without intending to present additional documents.

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[11], 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. This means that "the taxpayer is barred from

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9 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.

10 Exhibit "P-45", Division Docket, Volume II, pp. 558-564.

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

disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence".

With respect to petitioner's allegation that respondent was given the ample opportunity to explain its side and thus due process requirement was complied with, the Court *En Banc* also finds the same bereft of merit.

In the instant case, respondent 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 wait for the expiration of the period within which respondent may file its Protest to the PAN before issuing the subject FLD and ANs.

In not awaiting the lapse of the 15-day period to file a reply to the PAN under Section 3.1.2[12] of RR 12-99, as amended by RR 18-2013 and RR 7-2018[13], 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.

In *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[14], the Supreme Court held that:

> ...
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> 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**

12 3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

...

13 Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

14 G.R. No. 227616, 19 June 2019; Citation omitted, emphasis supplied and underscoring in the original text.

> **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.**
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> 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 rights and the failure of the CIR to strictly comply 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.**
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> ...

As to petitioner's argument that respondent was nevertheless given the benefit of the full 15-day period (as the FLD was issued on 21 January 2013 or seventeen days after respondent received the PAN on 04 January 2013), it may not be amiss to reiterate that the same would still fall short of the standards laid down by the Supreme Court in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[15] where it was held that:

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> 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.
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> ...
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> 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.***"
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> ...
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> 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.
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> ...

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

WHEREFORE, with the foregoing, petitioner Commissioner of Internal Revenue's Motion for Reconsideration (Decision dated November 18, 2020) filed on 18 December 2020 is **DENIED** for lack of merit. Accordingly, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is thus **ENJOINED** from proceeding with the collection of the taxes assessed against respondent Max's Sta. Mesa, Inc., arising from the Formal Letter of Demand and Assessment Notice No. 39-B093-09 dated 25 January 2013 in the total amount of ₱95,002,952.60.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice