REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

POLYMER PRODUCTS (PHIL.), INC., *Petitioner,*	**CTA CASE NO. 8299**
	Members:
- *versus* -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 30 2015 ; 3:04 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on June 27, 2011 by petitioner Polymer Products (Phil.), Inc., praying for the cancellation and withdrawal of respondent Commissioner of Internal Revenue's deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) assessments against petitioner for taxable year 2007, in the aggregate amount of **FIFTY FOUR MILLION TWO HUNDRED TEN THOUSAND SIX HUNDRED NINE PESOS and 97/100** (₱54,210,609.97).

THE PARTIES

Petitioner Polymer Products (Phil.), Inc. is a domestic corporation, duly organized and existing under Philippine laws, with principal office at No. 11, Joe Borris St., Bo. Bagong Ilog, Pasig City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under appropriate laws with the authority to carry out the

[1] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI); CTA Docket, p. 70.

functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended and other laws, rules and regulations.[2]

THE FACTS

On September 1, 2008, respondent issued Letter of Authority (LA) No. 200700042013[3] for purposes of investigating petitioner's all internal revenue taxes for the year ending December 31, 2007.

As a result of said investigation, petitioner received on January 3, 2011 a Preliminary Assessment Notice (PAN)[4] dated December 17, 2010, finding petitioner liable for deficiency income tax, VAT and EWT for taxable year 2007 in the following amounts:

Deficiency Income Tax	₱38,848,860.51
Deficiency VAT	₱12,685,048.30
Deficiency EWT	₱1,563,650.03

On January 17, 2011, petitioner received respondent's Formal Letter of Demand (FLD) No. 043A-B319-07 dated January 7, 2011, with attached Assessment Notices and Details of Discrepancies,[5] assessing petitioner of the following deficiency taxes for the year 2007:

I.	Income Tax	₱39,669,513.13
II.	VAT	12,945,458.13
III.	EWT	1,595,638.71
Total amount due		**₱54,210,609.97**

On January 20, 2011, petitioner filed its protest letter against the FLD and Assessment Notices pursuant to Section 228 of the NIRC of 1997, as amended.[6]

On May 26, 2011, petitioner received a letter dated May 18, 2011, signed by Regional Director Nestor S. Valeroso, informing petitioner that

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[2] Par.2, Stipulated Facts, JSFI; p 70, CTA Docket.
[3] Exhibit "H", CTA Docket p. 293.
[4] Exhibit "V", CTA Docket, pp. 317-318.
[5] Par. 3, Stipulated Facts, JSFI, CTA Docket, p. 71; Exhibits "B", "C", "D" and "E", CTA Docket, pp. 279-285.
[6] Exhibit "F", CTA Docket, pp. 287-290.

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the assessments are being reiterated in view of petitioner's alleged failure to submit documents in support of its protest. Moreover, respondent stated that the May 18, 2011 letter will serve as the Bureau of Internal Revenue's (BIR) "FINAL DECISION" on the matter.[7]

On June 27, 2011, petitioner filed the instant Petition for Review.

In her Answer,[8] respondent CIR raised the following special and affirmative defenses:

a) The assessment for calendar year 2007 in the total amount of ₱54,210,607.97 was issued in accordance with law and regulations;

b) Petitioner has undeclared sales of ₱49,549,730.67 which were not reflected in its financial statements, hence assessed pursuant to Sec. 31 of the 1997 Tax Code, as amended. It is likewise subject to VAT pursuant to Sections 106 and 108 of the 1997 Tax Code, as amended;

c) Petitioner has payments in the aggregate amount of ₱22,977,679.121 which were not subjected to withholding taxes as required under RR No. 2-98, as amended, hence, disallowed as deductions pursuant to Sec. 34 (K) of the 1997 Tax Code, as amended;

d) There is unsupported excess input tax carried over from previous period in the amount of ₱2,109,082.13 claimed even without documentary evidence, hence disallowed as deductions from VAT liability pursuant to Sec. 110 of the 1997 Tax Code, as amended; and,

e) Settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith *(Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671)*. It is the taxpayer not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

After the Pre-Trial Conference on September 9, 2011,[9] the parties filed their Joint Stipulations of Facts and Issues[10] and Supplemental Joint

[7] Exhibit "G", CTA Docket, p. 291.
[8] CTA Docket, pp.38 to 41.

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Stipulations of Facts and Issues[11] on October 4, 2011 and October 17, 2011, respectively. The Court approved the parties' Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues and terminated the pre-trial on October 19, 2011.[12] Thereafter, the Court issued the Pre-Trial Order[13] on January 9, 2012.

On January 10, 2012, Atty. Pepito Po of R.S. Bernaldo and Associates was commissioned as Independent Certified Public Accountant (ICPA) upon motion of petitioner.[14]

Thereafter, trial ensued, wherein the parties presented their respective evidence. Petitioner presented Mutya T. Faigao[15] and Atty. Pepito G. Po,[16] as its witnesses, and documentary evidence marked as Exhibits "A" to SSSSSSSSSS-1", which the Court admitted in its Resolution [17] dated October 5, 2012.

On the other hand, respondent presented BIR Revenue Officer I Charlie de Leon[18] and BIR Revenue Officer Benedict R. Bacani,[19]as her witnesses, and documentary evidence, marked as Exhibits "1" to "16", inclusive of sub-markings, which were admitted by the Court (except Exhibit "6") in the Resolution[20] dated November 20, 2013.

The parties having filed their respective memoranda within the extended period granted by the Court,[21] the case was deemed submitted for decision on February 10, 2014.[22]

ISSUES

As stipulated by the parties, the following are the issues[23] to be resolved:

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[9] CTA Docket, p. 42.
[10] CTA Docket, pp. 70-76.
[11] CTA Docket, pp. 79-85.
[12] CTA Docket, p. 87.
[13] CTA Docket, pp. 174-182.
[14] Resolution dated January 10, 2012, CTA Docket, p. 186.
[15] Minutes of Hearing dated December 1, 2011, CTA Docket p. 141.
[16] Minutes of Hearing dated April 17, 2012, CTA Docket p. 223.
[17] CTA Docket, pp. 1138 to 1140.
[18] Minutes of Hearing dated November 15, 2012, CTA Docket p. 1143.
[19] Minutes of Hearing dated November 15, 2012, CTA Docket p. 1143.
[20] CTA Docket, p. 1332.
[21] CTA Docket, pp. 1336, 1354, & 1356.
[22] CTA Docket, p. 1416.

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1. Whether the right of respondent to make an assessment for income tax, VAT, and EWT for taxable year 2007 has prescribed?

2. Whether petitioner was denied due process of law?

3. Whether petitioner has undeclared sales/income for taxable year 2007 that should have been subjected to income tax and VAT?

4. Whether petitioner has income payments not subjected to EWT?

5. Whether petitioner's input tax credits of ₱2,743,568.76 were unsupported?

6. Whether or not the deficiency tax assessments against petitioner for 2007 have no factual and legal bases?

7. Whether petitioner is liable for deficiency income tax, VAT and EWT in the total amount of ₱54,210,609.97, inclusive of interests?

The foregoing issues boil down to the principal issue of:

"Whether or not petitioner may be held liable for deficiency income tax, VAT and EWT in the aggregate amount of ₱54,210,609.97, inclusive of surcharges, interest and penalties for taxable year 2007?"

THE COURT'S RULING

The Court shall first resolve the issue of whether or not petitioner was denied due process of law.

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

"**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,

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[23] JSFI, CTA Docket, pp. 178-179.

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> however, That a preassessment notice shall not be required in the following cases:
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> Xxx xxx xxx.
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> 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.**
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> 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.
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> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> Xxx xxx xxx."

Corollary thereto, Section 3.1.2 of Revenue Regulations No. 12-99[24] provides:

> "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 law, rules and regulations, or jurisprudence on which the proposed assessment is based..... 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.
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> xxx xxx xxx"

Pursuant to the afore-quoted provisions, it is clearly mandated that a taxpayer is given an opportunity to respond to the PAN within fifteen (15) days from receipt thereof. Upon the lapse of the 15-day period, without any response from the taxpayer, the latter shall be considered in default and the BIR shall issue a formal letter of demand and assessment notices.

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[24] dated September 6, 1999.

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In the instant case, **records show that petitioner received a copy of the PAN dated December 17, 2010 on January 3, 2011**. Thus, petitioner has fifteen (15) days or until **January 18, 2011** within which to file a reply or protest against the PAN. Prior to the lapse of the fifteen-day period within which petitioner can respond to the PAN, **petitioner received the FLD dated January 7, 2011 and Assessment Notices on January 17, 2011.** Notably, **the BIR did not even wait for petitioner to reply to the PAN[25] before issuing the FLD and the Assessment Notices on January 7, 2011.** Stated differently, the assessment notices were issued by the BIR even before the lapse of the fifteen-day period within which petitioner could file a reply or protest to the PAN.

As earlier quoted, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. Indubitably, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[26] the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared in no uncertain terms that **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. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.

Although petitioner was given ample opportunity to contest the FLD and Assessment notices, **the fatal infirmity that attended its issuance prior to the lapse of the period to respond to the PAN is not cured thereby**. In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[27] the Supreme Court ruled that the non-compliance with

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[25] Petitioner filed its reply to the PAN on January 12, 2011.
[26] G.R. No. 185371, December 8, 2010.
[27] G.R. No. 172598, December 21, 2007.

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statutory and procedural due process renders the final assessment notice as null and void, *viz*:

> "In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.** Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in Roxas v. Court of Tax Appeals:
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> > The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

It is worthy to note that, in a number of cases, the Court has declared void any assessment that fails to comply with the due process requirement.

In *A Brown Co., Inc. vs. Commissioner of Internal Revenue*,[28] the CTA ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: (1) **issuance of the final assessment only four (4) days after the issuance of the PAN**; and, (2) **the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt**.

Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue*,[29] the Court ruled that:

> "**Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenue Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN**. Even assuming that there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner,

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[28] CTA Case No. 6357, June 7, 2004, penned by Presiding Justice Ernesto P. Acosta and concurred by Justice Juanito C. Castañeda, Jr. and Justice Lovell R. Bautista.

[29] CTA Case No. 6980, October 4, 2010, penned by Associate Justice Lovell R. Bautista and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

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> through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process." *(Emphasis supplied)*

The above rulings were reiterated in *Yumex Philippines Corporation vs. Commissioner of Internal Revenue*[30] wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period granted to the taxpayer to respond to the PAN, *viz*:

> "Respondent violated Section 228 of the NIRC of 1997 and the provisions of Revenue Regulations No. 12-99, which give the taxpayer a period of fifteen days within which to reply to the PAN. **In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void**." *(Emphasis supplied)*

All told, considering the palpable violation of petitioner'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, FLD No. 043A-B319-07 dated January 7, 2011 and the Assessment Notices - - being fatally infirm - - should be considered void. For that reason, their cancellation and withdrawal is therefore warranted.

With the above conclusion thus reached, the Court finds no need to discuss the other issues raised by the parties for being moot and academic.

WHEREFORE, premises considered, the Petition for Review filed on June 27, 2011 by petitioner Polymer Products (Phil.), Inc. is hereby **GRANTED**. Accordingly, Formal Letter of Demand No. 043A-B319-07 dated January 7, 2011 and the attached Assessment Notices,[31] assessing and demanding from petitioner Polymer Products (Phil.), Inc. the payment of deficiency income tax, value-added tax and expanded withholding tax in the total amount of ₱54,210,609.97 for the period covering taxable year 2007, are hereby **CANCELLED** and **WITHDRAWN**.

[30] CTA Case No. 8331, 28 November 2013, penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.
[31] Par. 3, Stipulated Facts, JSFI, CTA Docket, p. 71; Exhibits "B", "C", "D" and "E", CTA Docket, pp. 279-285.

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SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
(with Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
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

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

POLYMER PRODUCTS (PHILS.) INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 8299

Members:
DEL ROSARIO, *Chairperson*,
UY
MINDARO-GRULLA, *JJ.*

Promulgated:
JAN 30 2015 ; 3:04 p.m.

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DISSENTING OPINION

MINDARO-GRULLA:

With all due respect, I dissent from the majority opinion to cancel and withdraw the Formal Letter of Demand No. 043-A-B319-07 and assessment notices demanding the payment of deficiency income tax, value-added tax and expanded withholding tax in the amount of P54,210,609.97 for the taxable year 2007.

In the instant case, the assessment notice and formal letter of demand were issued by the Bureau of Internal Revenue (BIR) before the lapse of the 15 day period for the taxpayer to respond or file a reply to the Preliminary Assessment Notice (PAN). The majority view that the formal letter of demand for the payment of P54,210,609.97 on deficiency taxes and assessment notices thereon are void due to the violation of petitioner's right to procedural due process. I disagree.

Section 3 of RR No. 12-99, as amended by RR No. 18-2013, provides for the procedure in the issuance of tax assessments, to wit:

"SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -

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

3.1.1 *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.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

The said provision does not require that the period of 15 days be exhausted for the Final Assessment Notice (FAN) to be issued. What it provides is that the FAN would be issued if no response was given by the taxpayer within a period of 15 days from the date of receipt of the PAN.

In the case of *Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation*[1], the CTA *En Banc* explained that a reply or protest against the PAN, unlike the protest against the FAN, is not indispensable. A PAN may or may not even be protested to by the taxpayer, and the

[1] CTA EB Nos. 631 and 632, December 22, 2011.

fact of non-protest shall not in any way make the PAN final and unappealable. Therefore, the issuance of the FAN before the lapse of the 15-day period for the taxpayer to file its protest to the PAN inflicts no prejudice on the taxpayer for as long as the latter is properly served a FAN and that it was able to intelligently contest the FAN by filing a protest letter within the period provided by law.[2]

While the Supreme Court in the cases of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[3] (Metrostar) and *Pilipinas Shell Petroleum Corp. vs. Commissioner of Internal Revenue* [4] (Shell) explained the importance of due process, the same were not squarely applicable as said cases involves the failure to send PAN or non-issuance of PAN. In the case of *Commissioner of Internal Revenue vs. Ajinomoto Philippines Corporation*[5], the CTA *En Banc* ruled as follows:

> *"The case of Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[6] *(Metrostar) and Pilipinas Shell Petroleum Corp. vs. Commissioner of Internal Revenue* [7] *(Shell) relied upon by Ajinomoto don not apply in all fours. In both Metro Star and Shell, the failure to send or non-issuance of PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, renders the assessment made by the CIR void. In this case, there was no failure to send or non-issuance of PAN but rather, Ajinomoto received the PAN and FAN. This Court agrees with the findings of this Court's division, to wit:*
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> > *"Though respondent successively issued the Notice of Informal Conference, the Preliminary Assessment Notice and the Formal Letter of Demand, together with the Details of Discrepancies and Assessment Notices, one after another, the fact remains that petitioner has been duly notified of the procedures prescribed under Section 228 and has been informed of the factual and legal bases of the*

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[2] *Global Metal Tech Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8329, September 23, 2014.
[3] G.R. No. 185371, December 8, 2010.
[4] G.R. no. 172598, December 21, 2007.
[5] CTA EB Nos. 1010 and 1015, November 3, 2014.
[6] G.R. No. 185371, December 8, 2010.
[7] G.R. no. 172598, December 21, 2007.

> *assessments. In fact, petitioner was able to exhaustively protest respondent's assessments in a Letter dated December 23, 2008. Even the Court-commissioned ICPA in his Final and Consolidated Report made mention of the basis of the BIR's computation of the deficiency tax assessments. Had the assessment no factual and legal bases and had petitioner not been properly informed of the said factual and legal bases of the assessment, then the Court-commissioned ICPA and this Court would not have been able to compute the deficiency FBT assessment against the petitioner.* "

Concomitantly, there is no violation of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence[8]*. While the FAN was issued before the period to respond to PAN has expired, Ajinomoto nevertheless received the PAN and FAN, was informed of the factual and legal bases of the assessments, and was able to intelligently respond to the PAN and FAN in a Letter dated December 23, 2008.*

It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[9] *It has been held that the essence of due process is found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. What the law proscribes is the lack of opportunity to be heard.*[10]

It cannot be denied that Ajinomoto having been given the opportunity to refute the charges against it, was able to timely file its administrative protest and was able to discuss its position on the deficiencies being assessed against it. Apparently, there was substantial compliance in the procedure in protesting the assessments and petitioner's right to due process was adequately observed and protected. Thus, we find the Court's division correctly ruled as follows:

> *"xxx due process in our jurisdiction refers to the right of the taxpayer to be*

[8] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[9] Rizal Commercial Banking Corporation vs Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006
[10] Estares, et al. vs. Court of Appeals, et al., G.R. No. 144755, June 8, 2005.

> *informed of the legal and factual findings of the BIR as regards its deficiency taxes, and the opportunity to be heard through protest. Section 228 of the NIRC of 1997 clearly refers to the Final Assessment Notice that should be formally protested. In the instant case, there is no doubt that petitioner was able to file its protest to the FAN.*[11]

In the instant case, petitioner was given due process as it was able to receive the PAN and FAN. Petitioner was able to intelligently contest the FAN by filing a protest letter within the period provided by law. Thus, there was no prejudice incurred in the procedure in protesting the assessments and petitioner's right to due process was adequately observed and protected.The essence of due process is simply an opportunity to be heard, logically preconditioned on prior notice, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling being complained.[12]

Concomitantly, it is my humble opinion that the other issues stipulated by the parties be resolved and the evidences presented by the parties before the Court during trial be examined.

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

[11] Supra. Note 3.

[12] *Office of the Ombudsman vs. Reyes,* G.R. No. 170512, October 5, 2011.