REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

HI-STAKES GAMING, INCORPORATED *Petitioner*,	**CTA CASE NO. 10172**
	Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 28 2023 2:58 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,[1] filed by petitioner Hi-Stakes Gaming Incorporated against respondent Commissioner of Internal Revenue ("CIR"), seeking the reversal of the Decision rendered by respondent holding petitioner liable for deficiency corporate income tax covering taxable year 2011 in the amount of ₱6,539,087.94, inclusive of interest, surcharge, and compromise penalty.[2]

The Parties

Petitioner is authorized and licensed by the Philippine Amusement and Gaming Corporation ("PAGCOR") to conduct, maintain, and operate the business of games, recreation, and amusement and is duly registered with the Bureau of Internal Revenue ("BIR").[3]

Meanwhile, respondent is the duly appointed Commissioner of the BIR empowered to perform duties of said office including, among others, the power to decide on disputed assessments, refunds of internal revenue taxes,

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1 *See* Petition for Review, Records pp. 6-26.
2 Pre-Trial Order, *id.*, pp. 262-268.
3 *Ibid.*

fees, or other charges, penalties imposed in relation thereto, or other matters arising under the ***National Internal Revenue Code of 1997 ("Tax Code")*** or other laws or portions thereof administered by the BIR.[4]

The Facts

The BIR, through Regional Director Araceli L. Francisco, issued Letter of Authority ("LOA") No. LOA-21B-2013-00000065/LA201000058393, dated 9 July 2013, authorizing Group Supervisor Clarita Beltran and Revenue Officer Marie Ann Guevarra to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes covering taxable year 2011.[5]

On 13 October 2014, petitioner received a Preliminary Assessment Notice, dated 7 October 2014, issued by Officer in Charge-Assistant Regional Director Conrado C. Lee ("OIC-Assistant RD Lee") covering taxable year 2011.[6]

Thereafter, the BIR issued a Formal Letter of Demand, dated 28 October 2014, with assessment notices assessing petitioner for alleged deficiency income tax in the amount of ₱6,055,509.36 for taxable year 2011 pursuant to ***Revenue Memorandum Circular ("RMC") No. 33-2013***.[7]

On 20 November 2014, OIC-Assistant RD Lee issued a Letter acknowledging receipt of petitioner's protest to the PAN.[8] Petitioner filed a Letter of Protest/ Request for Reconsideration to the FLD, dated 2 December 2014, in response.[9]

Respondent then issued the Final Decision of Disputed Assessment, dated 27 July 2015,[10] to which petitioner filed a Request for Reconsideration.[11]

CIR rendered its Final Decision dated 15 August 2019.[12]

On 26 September 2019, petitioner filed the instant Petition for Review.

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4 *Ibid.*
5 *Ibid.*
6 *Ibid.*
7 *Ibid;* Subject: Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees, 17 April 2013.
8 Pre-Trial Order, Records, pp. 262-268.
9 *Ibid.*
10 *Ibid.*
11 *Ibid.*
12 *Ibid.*

On 9 October 2019, respondent CIR was served with Summons.[13]

On 10 January 2020, respondent filed his Answer[14] and raised the following special and affirmative defenses:

(1) The Court has no jurisdiction over the present case because the assessment has become final, executory, and demandable;
(2) Assuming that this Court has jurisdiction, petitioner is liable to pay the assessed deficiency income taxes for taxable year 2011; and
(3) ***RMC No. 33-2013*** is valid insofar as it imposes income tax to licensees and contractees of PAGCOR.

Then, on 28 January 2020, respondent transmitted the BIR Records of the case consisting of three hundred ninety-three (393) pages and filed the corresponding Compliance,[15] of which the Court took note in a Minute Resolution, dated 31 January 2020.[16]

Petitioner and respondent filed their Pre-Trial Briefs on 27 August 2020[17] and 28 August 2020,[18] respectively. Following this, the Pre-Trial Conference was held on 1 September 2020.[19]

The parties filed their Joint Stipulation of Facts and Issues ("JSFI") on 1 October 2020,[20] which the Court admitted and approved in its Resolution,[21] dated 7 October 2020. Thus, on 20 January 2021, the Pre-Trial Order was rendered.[22]

During trial, petitioner presented the following witnesses:

(1) Raymundo V. Nazario, petitioner's President, who testified and identified his Judicial Affidavit[23] during the hearing on 2 December 2020;[24] and

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13 Records, p. 64.
14 *Id.*, p. 87-101.
15 *Id.*, pp. 106-109.
16 *Id.*, p. 110.
17 *Id.*, pp. 113-118.
18 *Id.*, pp. 175-180.
19 *Id.*, pp. 334-336.
20 *Id.*, pp. 219-221.
21 *Id.*, pp. 230-231.
22 *Id.*, pp. 262-268.
23 Exhibits "P-12" and "P-12-1", *id.*, pp. 121-128.
24 *Id.*, pp. 237-239.

(2) Girlie Garcia-Salazar, petitioner's former Chief Accountant, who testified and identified her Judicial Affidavit[25] during the hearing on 11 February 2021.[26]

Petitioner formally offered its documentary evidence on 15 March 2021,[27] with respondent's Comment [Re: Petitioner's Formal Offer of Evidence] filed through private courier and received by this Court on 26 May 2021.[28]

In a Resolution, dated 16 July 2021, the Court admitted all of petitioner's formally offered documentary evidence except Exhibits "**P-5**", "**P-6**", "**P-7**", "**P-14**", "**P-14-1**", and "**P-14-2**". Upon petitioner's Motion[29] with respondent's Comment,[30] the Court admitted Exhibit "**P-5**" and set a date for Commissioner's Hearing for comparison of photocopies with the originals of Exhibits "**P-14**", "**P-14-1**", and "**P-14-2**" in a Resolution, dated 5 January 2022.[31] During the Commissioner's Hearing on 1 March 2022,[32] petitioner compared the photocopies with the originals of which the Court took note in a Minute Resolution dated 18 March 2022.[33]

Thereafter, respondent presented the following witnesses:

(1) Revenue Officer Marie Ann Santos, who testified and identified her Judicial Affidavit[34] during the hearing on 22 February 2022;[35] and
(2) Revenue Officer Katrina P. Pasion, who testified and identified her Judicial Affidavit[36] during the hearing on 10 March 2022.[37]

Respondent formally offered his documentary evidence on 21 March 2022,[38] with petitioner's Comment to the Formal Offer of Evidence filed on 3 March 2022.[39] In a Resolution, dated 11 May 2022,[40] the Court admitted all of respondent's formally offered evidence.

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25 Exhibits "P-13" and "P-13-1", *id.*, pp. 243-246.
26 *Id.*, pp. 276-278.
27 *Id.*, pp. 289-306.
28 *Id.*, pp. 364-365.
29 Motion for Reconsideration (of the Resolution dated July 16, 2021), *id.*, pp. 373-377.
30 Comment (on Petitioner's Motion for Reconsideration), *id.*, pp. 382-386.
31 *Id.*, pp. 390-391.
32 *Id.*, pp. 402-403
33 *Id.*, p. 450.
34 Exhibits "R-11" and "P-11-a", *id.*, pp. 211-216.
35 *Id.*, p. 397.
36 Exhibits "R-13" and "R-13-1", *id.*, pp. 411-415.
37 *Id.*, pp. 441-443.
38 *Id.*, pp. 451-456.
39 *Id.*, pp. 459-463.
40 *Id.*, pp. 468-469.

Thereafter, respondent filed his Memorandum on 27 June 2022.[41] Petitioner filed its Memorandum on 25 July 2022.[42]

With the filing of both parties' respective memoranda, the case was submitted for decision on 2 August 2022.[43]

Hence this Decision.

The Issues[44]

The issues submitted for this Court's resolution are as follows:

(1) Whether petitioner is subject to ***RMC No. 33-2013*** and subsequently liable for deficiency income tax in the amount of ₱2,885,211.86 for taxable year 2011; and

(2) Whether the protest to the FLD was filed on time.

Arguments of the Parties

Petitioner's Arguments[45]

Petitioner claims that it was denied the right to due process, explaining that it received the PAN, dated 7 October 2014, only on 13 October 2014. Following respondent's own rules, particularly ***Section 3.1.2 of Revenue Regulations ("Rev. Regs.") No. 12-99***, it had fifteen (15) days from receipt of PAN or until 28 October 2014 within which to file a protest or motion for reconsideration/reinvestigation. Petitioner believes it was not given the said opportunity to respond when respondent issued the FLD/FAN on 28 October 2014. Petitioner, however, admits that it filed its protest only on 11 November 2014 but maintains that the FLD, dated 28 October 2014, is void for violation of due process.

Assuming the FLD is valid, petitioner argues that its Protest to the FLD was filed on time. Petitioner relies on its statement in its Protest Letter that a copy of the FLD was "received on November 11, 2014". It claims that respondent's evidence (i.e. Affidavit of Service) to establish petitioner's supposed receipt of the FLD/FAN on 5 November 2014 cannot be given weight because it was submitted belatedly and was not part of the evidence

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[41] *Id.*, pp. 470-494.
[42] *Id.*, pp. 496-518.
[43] *Id.*, p. 520.
[44] *Id.*, pp. 166-168.
[45] Petitioner's Memorandum, *id.*, pp. 496-518.

during pre-trial. It also claims that the respondent was not able to prove that the BIR's resort to substituted service is proper, pursuant to ***RMC No. 40-2019***. Even assuming the protest was filed three (3) days late, petitioner argues that the case is meritorious and needs to be taken up, citing ***Republic v. Daondon***.[46]

Finally, petitioner maintains that its income from bingo games should only be subject to franchise tax in lieu of all kinds of taxes.

Respondent's Arguments[47]

Respondent maintains that this Court has no jurisdiction over the assessment that has become final, executory, and demandable due to failure of petitioner to file a timely protest to the FLD/FAN. According to respondent, records show that petitioner received the FLD/FAN on 5 November 2014. It counters that petitioner's statement in its Protest Letter on the date of receipt of the FLD/FAN is self-serving. Citing ***Section 228 of the Tax Code***, respondent claims that petitioner had until 5 December 2014 to file a valid protest on the assessment. However, petitioner belatedly filed its protest on 8 December 2014.

Assuming this Court has jurisdiction, respondent asserts that petitioner is still liable to pay the assessed deficiency income taxes for taxable year 2017. According to respondent, petitioner's franchise with PAGCOR is limited to conduct traditional bingo operations. It does not extend to operation of casinos. Thus, the exemption granted by ***P.D. 1869*** on the payment of 5% franchise tax, in lieu of corporate income tax, does not extend to petitioner.

Respondent also points out that ***RMC No. 33-2013*** expressly provides that income from traditional bingo, electronic bingo, and other bingo variations are income from "other related operations" that are subject to corporate income tax. He also argues that ***RMC No. 33-2013*** is merely a clarificatory issuance and did not alter, modify, or amend the intent of ***Section 13(2)(b) of P.D. No. 1869.***

The Ruling of the Court

The instant Petition for Review is meritorious.

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[46] G.R. No. 210540, 19 April 2016.
[47] Memorandum, Records, pp. 470-494.

<u>Petitioner's right to due process was violated when respondent issued the FLD/FAN before the lapse of the 15-day period from taxpayer's receipt of the PAN and, thus, the assessment is void.</u>

Petitioner claims that the FLD is invalid for having been issued in violation of its right to due process.

The Court agrees with petitioner.

Section 228 of the Tax Code provides for the due process requirements for the issuance of an assessment as follows:

> "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: …
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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**.
>
> **<u>Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice</u>.**
>
> If the **taxpayer fails to respond, the Commissioner or his duly authorized representative <u>shall issue an assessment based on his findings</u>**.
>
> 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."
> (Emphasis and underscoring, Ours.)

The foregoing provision is implemented by ***Section 3 of RR No. 12-99, as amended***, 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 <u>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</u>.

<u>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</u>.
..."
(Emphasis and underscoring, Ours.)

Based on the foregoing, the BIR is required to give the taxpayer a period of fifteen (15) days from the date of receipt of the PAN to file its response or protest against the same. It is only after receiving the taxpayer's response or the lapse of the said 15-day period that the BIR can issue the FLD/FAN.

In ***Prime Steel Mill, Inc. v. Commissioner of Internal Revenue***,[48] the Supreme Court emphasized the importance of the PAN stage and enjoined the strict observance by the BIR of the 15-day to issue the FLD/FAN:

"In several cases, this **Court has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights.**

In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, the Court held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.

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[48] G.R. No. 249153, 12 September 2022.

> The **importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.**
>
> In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that the **15-day period provided under *Revenue Regulations No. 12-99* for a taxpayer to reply to a PAN should also be strictly observed by the BIR**. The Court highlighted that "**[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN**."
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> While *Yumex* rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. **There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.**
>
> As the Court also held in Yumex, "[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment." "Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response."
>
> In the same vein, **it is beside the point that petitioner was able to submit a "well-prepared protest letter." The fact remains that respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.**
>
> Well-settled is the rule that an **assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect**."
>
> (Emphasis and underscoring supplied; citations omitted.)

In the present case, records show that petitioner received the PAN[49] on 13 October 2014.[50] Counting fifteen (15) days therefrom, petitioner had until 28 October 2014 within which to file its response or protest against the PAN. However, respondent issued the FLD/FAN[51] on 28 October 2014, the said fifteenth day. Clearly, respondent did not wait for the lapse of the mandatory fifteen (15)-day period prior to the issuance of the FLD/FAN.

Respondent's issuance of the FLD/FAN prior to the lapse of the period for petitioner to respond to the PAN is not cured by petitioner's subsequent filing of its protest. Such premature issuance of the FLD/FAN violates petitioner's right to procedural due process, rendering the FLD/FAN fatally infirm and, therefore, void.

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49 Exhibits "R-7", "R-7-1", and "R-7-2", BIR Records, pp. 147-149
50 Exhibit "R-7-4", *id.*, p. 151.
51 Exhibits "R-8", "R-8-1", "R-8-2", "R-8-3", "R-9", "R-9-1", *id.*, pp. 152-158.

Indeed, in ***Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue***,[52] the Supreme Court categorically ruled on the effect of such non-compliance with statutory and procedural due process, *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**. …"
> (Emphasis and underscoring, Ours.)

With the Court's conclusion that the assessment is void, there is no need for the Court to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review filed by Hi-Stakes Gaming Incorporated is hereby **GRANTED**. The Final Decision on Disputed Assessment dated 27 July 2015 assessing petitioner for deficiency taxes in the total amount of ₱6,539,087.94, inclusive of interest, surcharge, and compromise penalty is hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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52 G.R. No. 172598, 21 December 2007.

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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