12-000252-0084

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 8525

ASIA UNITED LEASING & FINANCE CORPORATION,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. VICTOR RICO P. LOPEZ
Bureau of Internal Revenue, Revenue Region No. 7B- East NCR
25th Floor, Legal Division, The Podium West Tower
ADB Avenue, Ortigas Center
Mandaluyong City

GRUBA CAGANDA ADVINCULA MELO & DELA FUENTE LAW OFFICES
(Formerly Zambrano Gruba Caganda & Advincula Law Offices
27/F, 88 Corporate Center
Sedeño corner Valero Streets
Salcedo Village, 1227 Makati City

GREETINGS:

You are hereby notified by these presents that on **August 13, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 14, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ASIA UNITED LEASING & FINANCE CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8525

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

AUG 13 2024 10:15AM

x - x

RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is respondent's *Motion for Reconsideration (Decision dated 26 February 2024)* posted on March 15, 2024 and received by the Court on April 29, 2024 with petitioner's *Comment (On the Respondent's Motion for Reconsideration dated 13 March 2024)* filed on May 24, 2024 seeking the reconsideration of the Decision of the Court dated February 26, 2024 granting the Petition for Review, the dispositive portion of which is quoted as follows:

> **WHEREFORE,** in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, for being void in view of the violation of petitioner's right to due process, the subject tax assessments embodied in the FAN/FLD dated January 4, 2012 issued against petitioner for deficiency income tax, EWT, and DST plus interests, for TY 2008, in the total amount of ₱5,578,461.96, are **CANCELLED** and **SET ASIDE**. Moreover, the Preliminary Collection Letter dated June 25, 2012 and Final Notice Before Seizure dated July 16, 2012, both issued against petitioner for TY 2008 are **WITHDRAWN** and **SET ASIDE**.

> Respondent or any person duly acting on his behalf is hereby **ENJOINED** from collecting or taking further action on the subject deficiency taxes against petitioner for TY 2008.
>
> **SO ORDERED**."

Respondent's main argument is that petitioner's right to due process was not violated as the Preliminary Assessment Notice (PAN), the Formal Letter of Demand (FLD) and Final Assessment Notices (FANs) were all duly served and received by petitioner and despite the slight infirmity on the issuance date of the FLD and FAN, petitioner was able to intelligently contest the assessment and was afforded the opportunity to defend itself.

We find the above argument bereft of merit.

The assailed Decision dated February 26, 2024 cancelled the tax deficiency assessments on the ground that petitioner's right to due process was violated when the FLD/FANs were issued within the fifteen (15)-day period provided to petitioner within which to reply or respond to the PAN, and we quote:

> "Based on the foregoing provisions, 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 or response thereto with the BIR. It is only upon the lapse of the prescribed 15-day period, (without such protest or response being filed by the taxpayer within such period), that respondent may issue the corresponding FLD or FAN.
>
> xxx xxx xxx
>
> In this case, the PAN was received by petitioner on January 4, 2012. Pursuant to Section 3 of RR No. 12-99, petitioner had fifteen (15) days or until January 19, 2012, within which to protest or respond to the said PAN.
>
> However, respondent issued the subject FLD/FAN on January 4, 2012, or on the same day as petitioner's receipt of the PAN, and before the lapse of the said fifteen (15)-day period for petitioner to protest or respond thereto. Clearly, the FLD/FAN was prematurely issued thereby depriving petitioner of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments."

Respondent's contention that the issuance date of the FLD/FAN within the period to respond to the PAN is a "slight infirmity" that does not affect the due process rights of the petitioner belittles the importance ascribed by law to the preliminary assessment stage of the entire assessment process which forms part of the basic constitutional right to due process of the taxpayer. This fundamental principle has been aptly affirmed in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*[1] when the Supreme Court ruled in this manner:

> "**The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity**." (*Emphases supplied*)

In an earlier case, the Supreme Court has elucidated the importance of giving the taxpayer the opportunity to contest the PAN before the issuance of the FAN,[2] and we quote:

> "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**." (*Emphases supplied*)

Finally, this Court has been consistent in holding that the period granted to assail the PAN is integral to the right of due process granted by law to the taxpayer.[3]

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[1] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[2] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,* G.R. No. 172598, December 21, 2007.
[3] *Monza SPV-AMC ("Asset Management Co.") Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9153, April 15, 2019 (Justice Catherine T. Manahan as *ponente*).

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Decision dated 26 February 2024)* posted on March 15, 2024, is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice