REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

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AJANTA PHARMA PHILIPPINES, INC., Petitioner,	**CTA Case No. 10057**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 04 2023 11:20 a.m.

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RESOLUTION

UY, J.:

For resolution is respondent's ***MOTION FOR RECONSIDERATION (to the Decision dated 23 January 2023)*** filed via registered mail on February 28, 2023,[1] with petitioner's ***COMMENT/OPPOSITION (TO THE MOTION FOR RECONSIDERATION DATED 28 FEBRUARY 2023)*** filed on April 24, 2023[2].

In the said *Motion*, respondent prays that the Decision dated January 23, 2023 rendered in this case be reconsidered, and set aside, and that another decision be rendered ordering petitioner to pay deficiency taxes. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. The FDDA dated February 28, 2019, and the subject VAT assessment issued against petitioner for the period from January 1, 2017 to June 30, 2017, in the

[1] Docket – Vol. 3, pp. 1142 to 1146.
[2] Docket – Vol. 3, pp. 1152 to 1159.

amount of ₱7,476,507.48 are **CANCELLED and SET ASIDE**.

Respondent is further **ORDERED TO ISSUE** the corresponding *Authority to Cancel Assessment* for the subject VAT assessment.

Lastly, unless reversed by higher courts, respondent is hereby **ENJOINED** from enforcing the collection of the subject VAT assessment against petitioner during the pendency of the instant case."

SO ORDERED."

Respondent's Motion for Reconsideration:

In his *Motion for Reconsideration*, respondent maintains that his deficiency assessment must be upheld as it was issued in compliance with the requirements of due process.

Citing jurisprudence,[3] respondent argues that the essence of due process in administrative proceedings refers to being given the opportunity to explain one's side, or an opportunity to seek reconsideration of the action complained of.

Allegedly, petitioner was afforded due process throughout the proceedings, since petitioner was able to file a Reply and protest to the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN), and therefore given an opportunity to present its side on the matter.

Respondent likewise avers that the PAN, FAN and Final Decision on Disputed Assessment (FDDA) clearly provided the factual and legal basis specifically on why the sales discount was disallowed citing the sales invoice number, date of its issuance, customer name, and senior citizen discount per sales invoice, and that the assessment notices also indicate that the sales discount to senior citizen were disallowed pursuant to Revenue Regulations (RR) No. 7-2010.

Respondent adds that petitioner's reply and protest were duly considered. The additional documents submitted by petitioner such as VAT invoices and receipts were allegedly considered.

[3] *Haydee C. Casimiro vs. Filipino T. Tandog*, G. R. No. 146137, June 8, 2005.

Lastly, respondent argues that the findings of disallowed sales discount to senior citizen have factual and legal bases.

Petitioner's Comment/Opposition:

In its *Comment/Opposition*, petitioner contends that respondent's motion for reconsideration should be denied as it is merely *pro forma* since it contains a mere reiteration of the same arguments raised by respondent which had already been extensively passed upon by the Court.

Moreover, petitioner argues that the subject value-added tax (VAT) assessment is void for having been issued in violation of petitioner's right to due process. Petitioner stresses that due process does not only require that a taxpayer is given the right to submit evidence, but also calls for the evaluation and consideration of the evidence presented.[4]

According to petitioner, even though it was able to file its Reply and Protest, respondent failed to consider them including all the pieces of evidence it presented. Moreover, respondent's argument that the VAT invoices and receipts submitted by petitioner during the reinvestigation stage is allegedly misleading. The supporting documents cited by respondent pertain to the disallowed input tax assessment. Thus, this does not disprove the fact that respondent still did not consider petitioner's submission in connection with the disallowed sales discount assessment.

Anent respondent's arguments saying that the assessment is supported by factual and legal bases by mere indication of the sales invoice number, date of sales invoice's issuance, customer name, and discount subject of the assessment, the same is erroneous. Petitioner argues that the said information alone does not afford one of its right to due process. The factual and legal bases alleged by respondent (*e.g.* discount given was senior citizen discount, and application of RR No. 7-2010) were not applicable to petitioner.

Finally, petitioner counters that the findings of disallowed sales discount to senior citizens have no factual and legal bases. Petitioner emphasizes that there is no law or regulations which: 1) provides disallowance of sales discount for VAT purposes if the discount is not

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[4] Citing *Ang Tibay v. Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.

provided in all the sales made by the taxpayer; 2) provides the disallowance of sales discount for VAT purposes if the amount of the discount applied by the taxpayer in its sales for two (2) consecutive months and equal; and 3) limits the amount and mandates the manner of computation of sales discount for VAT purposes.

THE COURT'S RULING

Respondent's *Motion for Reconsideration* lacks merit.

This Court finds that respondent's arguments in his *Motion for Reconsideration* are simply reiterations of matters alleged in his *Answer* filed on June 26, 2019 and *Memorandum for Respondent* filed on December 6, 2021, which have already been considered and thoroughly discussed by this Court in the assailed Decision.

Nevertheless, We are still not convinced in respondent's consistent position that the subject VAT assessment was valid considering that petitioner was given the opportunity to be heard through the filing of a Reply and Protest to the PAN and FAN.

It bears reiterating that Section 228 of the NIRC of 1997, as amended, mandates that taxpayers shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[5] (*Avon* case), the Supreme Court stressed that the BIR, in carrying out its quasi-judicial power pertaining to tax investigation and assessment, demands the observance of due process because they affect the proprietary rights of a specific person. In doing so, the BIR ought to observe the fundamental requirements of due process in administrative proceedings. Among those requirements are that the administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected; and that the administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

[5] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Simply stated, an essential requirement of the due process in the issuance of tax assessment necessarily includes that the concerned taxpayer, must be informed, in writing, of the law and of the facts on which the assessment is made. This must be stated or embodied in the Formal Letter of Demand or FAN. Specifically, the CIR or his duly authorized representative must explain the particular facts upon which the conclusions are based, and those facts must appear in the record. The concerned taxpayer must not be left unaware on how the CIR or his duly authorized representative appreciated the explanations or defenses raised in connection with the assessment.

In this case, respondent failed to observe the above-mentioned requirements in the issuance of the subject assessment.

As discussed in the assailed Decision, in the FAN dated September 28, 2018, the BIR or respondent did not address any of the arguments raised by petitioner in its Reply. The Court observed that a comparison between the discussion stated in the Details of Discrepancies of the FAN dated September 28, 2018 and the discussions in the Details of Discrepancies of the PAN dated August 15, 2018 shows that the contents in the Details of Discrepancies of the PAN were reiterated in verbatim, except for the added phrase in the Details of Discrepancies of the FAN dated September 28, 2018, which states: "*It was disclosed that you conceded and paid for the above assessment amounting to P7, 446. 98 including increments, hence was cancelled to reflect the aforesaid partial payment*".

Similarly, in the FDDA dated February 28, 2019, the BIR or respondent failed as well to address the same arguments raised by petitioner in its Reply and Protest filed on October 30, 2018.

In sum, respondent's failure to observe the foregoing due process requirements effectively renders the subject tax assessment void. Accordingly, We shall no longer discuss the other issue raised by the parties since ultimately, a void assessment bears no valid fruit.[6]

Hence, We find no cogent reason to disturb, modify or overturn the assailed Decision.

[6] *Commissioner of Internal Revenue v. Unioil Corporation,* G.R. No. 204405, August 4, 2021.

WHEREFORE, in light of the foregoing considerations, respondent's *MOTION FOR RECONSIDERATION (to the Decision dated 23 January 2023)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On Official Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice